AL-MAJALLA AL AHKAM AL ADALIYYAH
(The Ottoman Courts Manual (Hanafi))

BOOK X. JOINT OWNERSHIP.

INTRODUCTION

TERMS OF ISLAMIC JURISPRUDENCE.

- 1045. Joint ownership consists of a thing itself belonging absolutely to more than one person, so that such persons enjoys a special position in relation to such thing. It is also customary to apply this expression to the contract whereby the state of joint ownership is brought about, and it is used in this sense in technical legal phraseology. Consequently, joint ownership is generally divided into two classes. The first consists of joint ownership of property held in absolute ownership brought about by one of the modes of acquiring property,such as purchase, or the acceptance of a gift. The second consists of joint ownership as a result of contract brought about by the offer and acceptance of the joint owners, the details concerning both of which are dealt with in the relevant Chapters. Another class consists of gratuitous joint ownership which is brought about by the joint acquisition of ownership by the public of things which are free and themselves belong absolutely to no particular person, such as water.
- 1046. Partition means to split up. The description and definition thereof will be given in the relevant Chapter.
- 1047. By wall is meant any wall, or partition made of boards or a fence of brushwood.
- 1048. By passers-by is meant generally those who pass along and across the public highway.
- 1049. By water channels is meant pipes and underground channels for conducting water.
- 1050. By dam is meant any boundary or water dam and the sides of any water channel.
- 1051. By vivification is meant cultivation whereby land is made fit for agriculture.
- 1052. By fencing is meant putting stones and other matter round land in order that other persons may not take possession thereof.
- 1053. By expenditure is meant disbursing property.
- 1054. Maintenance consists of the expenditure of money, goods and provisions for upkeep and sustenance.
- 1055. By accepting responsibility is meant undertaking to do and carry out any particular piece of work.
- 1056. Partners with equal shares are those who form a partnership with equal shares.
- 1057. By capital is meant money invested in anything.
- 1058. profit consists of interest and benefit.
- 1059. Where one person supplies capital to another on condition that the whole of the profit is to belong to him, the capital is called the invested capital: The person supplying such capital is called the investor and the person taking such capital is called the person employing capital.

CHAPTER I. JOINT OWNERSHIP OF PROPERTY OWNED IN ABSOLUTE OWNERSHIP.

SECTION I. DESCRIPTION AND CLASSIFICATION OF JOINT OWNERSHIP OF PROPERTY OWNED IN ABSOLUTE OWNERSHIP.

- 1060. Joint ownership of property owned in absolute ownership is brought about when more than one person join in the ownership on any particular thing, that is to say, where such thing belongs to them, as where ownership therein is acquired by any of the causes of acquiring ownership such as purchase, or taking by way of gift, or by acceptance of a bequest, or inheritance or by mixing or causing to mix one property with another, that is to say, by uniting them in such a way that they cannot be distinguished or separated the one from the other. Examples:-

  (1). Two persons buy a piece of property, or a person bestows property upon them by way of gift or by bequest and they accept the same: or two persons take a piece of property by way of inheritance. such property is jointly owned by them and they become joint owner in that property, and each one participates therein with the other.

  (2). Two persons mix their corn together, or their corn becomes mixed together; by reason of there being holes in the sacks. The corn mixed together in this way becomes joint property.
- 1061. If a gold coin belonging to one particular person is mixed with two other gold coins of the same type belonging to some other person in such a way that it cannot be distinguished from them, and two of them are lost, the remaining gold coin becomes the joint property of the two persons, in the proportion of one third and two thirds, the two thirds belonging to the owner of the two gold coins, the one third belonging to the owner of the one coin.
- 1062. Joint ownership of property owned in absolute ownership is divided into voluntary and obligatory joint ownership.
- 1063. Voluntary joint ownership is joint ownership brought about by the acts of the joint owners themselves, as where it arises through purchase, or acceptance of a gift, or by accepting a bequest, or mixing property together as referred to above.
- 1064. Obligatory joint ownership is joint ownership brought about be some cause other than the acts of the joint owners, as where it arises through inheritance or through two properties being mixed together.
- 1065. The joint responsibility of various persons to whom a thing has been entrusted for safe keeping is in the nature of voluntary joint ownership. But if a gust of wind carries away a person's garment, and it falls in a house which is jointly owned, the joint responsibility of the owners of the house for the preservation of the garment is in the nature of obligatory joint ownership.
- 1066. Joint ownership of property owned in absolute ownership is also divided into joint ownership of specific property and joint ownership of debt.
- 1067. Joint ownership of specific property consists of joint ownership of some specific property which is in existence, as where two persons have undivided joint ownership of a sheep or of a flock of sheep.
- 1068. Joint ownership of debt consists of joint ownership of something to be received, as where two persons ore joint owners of a certain sum of money owing to them by some other person.

SECTION II. THE MANNER OF DEALING WITH SPECIFIC PROPERTY JOINTLY OWNED.

- 1069. The joint owners of property held in absolute ownership may by agreement deal with their property in any way they wish, in the same way as a single owner of such property.
- 1070. The joint owners of a house may dwell together in such house. If one of them, however, wishes to introduce a stranger into the house, the other can prevent him from doing so.
- 1071. One of the joint owners of property held in absolute ownership may deal with such property alone, with the permission of the other. He may not, however, deal with it in such way as to cause injury to the other joint owner.
- 1072. Neither of the joint owners may force the other to sell or purchase his share. If the property held in absolute ownership jointly by them is capable of division, and the joint owner is not absent, such property may be divided. If it is not capable of division they may share the usufruct thereof. Details are given in Chapter II.

- 1073. The produce of property jointly owned in absolute ownership may be divided among the owners in accordance with their shares. Consequently, any stipulation that the milk of an animal which is jointly owned, or the young thereof shall go to one of the joint owners in excess of his share is invalid.
- 1074. The property in the young of animals follow the mother.

  Examples:-

  (1) A stallion belonging to A covers a mare belonging to B. The foal belongs to the owner of the mare.

  (2). A owns male and B female pigeons. The young belongs to the owner of the female pigeons.
- 1075. The joint owners of property held in absolute ownership are strangers to one another as regards their shares. Neither; is the agent of the other. Consequently, neither joint owner may deal with the share of the other without the latter's permission. But in the case of dwelling in a house which is jointly owned and as regards matters pertaining thereto, such as coming in and going out, each of the joint owners is considered to be an absolute owner of such property.

  Examples:-

  (1). One of the owners of a jointly owned horse lends or gives such horse on hire without the permission of the other, and it is destroyed while in the possession of the borrower or of the person taking it on hire. The second joint owner may claim to have the loss of his share made good by the first.

  (2). One joint owner rides a jointly owned horse, or places a load upon him without the permission of the other, the horse is destroyed while being ridden or driven. The second joint owner may claim to have the loss of his share made good by the first.

  (3). One joint owner uses a horse for a certain period so that it becomes weak and its value decreases. The other joint owner may claim to have the decrease in value which is represented by his share made good.

  (4). One of two joint owners of a house lives in such house for a certain period without obtaining the permission of the other. He is considered to be living in his own property held in absolute ownership, and he cannot be called upon by the other joint owner to pay rent corresponding to his share. If the house is burnt down by accident, he is likewise under no obligation to make good any loss.
- 1076. If one of the two joint owners of land cultivates such land, the other may not claim a share of the produce thereof in accordance with local custom, such as a third or a fourth. If the value of the land is decreased by reason of the cultivation, however, he may claim to have the amount of the decrease in value of his share made good by the joint owner cultivating the land.
- 1077. If one of two joint owners of lets such property on hire and receives the rent thereof, he is obliged to pay the other his share thereof.
- 1078. If one of the joint owners of property owned in absolute ownership is absent, the one who is present may take the usufruct of such property to the extent of his share thereof, provided the consent of other is given by implication, as is set forth in the following Articles.
- 1079. The absent joint owner is considered to have given his consent by implication to enjoyment of the usufruct by the joint-owner who is present, if the latter causes no harm in so doing to the jointly owned property held in absolute ownership.
- 1080. There can be no consent by implication to the enjoyment of the usufruct of jointly owned property held in absolute ownership where such property is changed by use by the particular person using it. Consequently, one of two joint owners of a piece of clothing cannot wear such clothing in the absence of the other. Again, one of two joint owners may not ride a jointly owned horse in the absence of the other. He may do so, however, up to the extent of his share in cases where there is no change by use of the particular person using it, such as carrying burdens, or ploughing land. again, where one of two joint owners is absent, the other may, every other day, enjoy the services of a servant who has been taken into their joint service.
- 1081. Habitation of a house is not changed by a change of persons dwelling therein. Consequently, if one of two joint owners of a house held in common in equal shares is absent, the other may use such house for a period of six months and leave it for six months. If members of such person's household are numerous, however, their dwelling in the house is of such a nature as to change it by reason thereof, and the absent joint owner cannot be held to have assented thereto by implication.
- 1082. In the event of the shares of a house jointly owned by two persons, one of whom is absent, being separated the one from the other, the joint owner who is absent. If there is danger of the house falling into disrepair, however, by reason of it being left vacant, the Court may let such separate part on hire and keep the rent of behalf of the absent joint owner.
- 1083. Partition of usufruct can only be had and is only valid after being settled by an action at law. Consequently, if one of the owners of a joint owned house lives alone in such house for a certain period without paying any rent is respect to the share of the other, the latter cannot claim rent in respect to his share for that period, or claim that he will dwell in it for a corresponding period. He may however, divide such house if it is capable of partition, or he may cause the usufruct thereof to be divided so that it may be valid thereafter. But if one of the joint owners is absent, and the other, as stated in the preceding Article, dwells therein for a certain period, and the absent joint owner returns, he may dwell in such house for a corresponding period.
- 1084. One of the owners of a jointly owned house who is present may validly let such house on hire, taking his own share of the rent and keeping the share of the absent joint owner. On the return of the latter, he may obtain his share from the former.
- 1085. Should one of the joint owners of land be absent, and it is known that cultivation will be beneficial to such land and will not result in any decrease in the value thereof, the joint owner who is present may cultivate the whole of such land. If the absent joint owner returns he may cultivate the land for a corresponding period. If it is known that cultivation of the land will result in a diminution of the value thereof and that leaving the land fallow will be beneficial thereto and will result in the increased fertility thereof, the absent joint owner cannot be held to have agreed by implication to the cultivation of such land. Consequently, a joint owner who is present may only cultivate the amount of his own share of such land. For example, if such land is jointly owned in equal shares, he may cultivate a half thereof. Should he cultivate the land again in the following year, he may only cultivate his own half. He may not cultivate one half in one year and the other half in the following year. If he cultivates the whole of such land and the absent joint owner returns, he may make good to him the decrease in value of his share of his land.

  The details as set out above apply, if the joint owner who is present does not make any application to the Court. Should he apply to the Court, However, the Court shall give permission for him to cultivate the whole of such land in order that the tithe and land tax shall not be lost. In such a case, should the absent joint owner return, he may not bring an action on account of any decrease in the value of the land.
- 1086. If one of the joint owners of an orchard is absent, the owner who is present stands in the place of the absent joint owner, and when the fruit ripens may take and consume his own share. He may also sell the share of the absent joint owner and set aside the price thereof. The absent joint owner, on return, has the option of either ratifying the sale and taking the price set aside, or of rejecting the sale and claiming to be given the value of his share.
- 1087. The share of one of the joint owners is considered to be deposited for safe keeping with the other. Consequently, if one of them, on his own initiative, deposits the jointly owned property with some other person for safe keeping and such property is destroyed, he must make good the loss of the share of the other joint owner. (See Article 790.)
- 1088. One of the joint owners may, if he wishes, sell his share to the other joint owner, or he may also sell it to some other person without the permission of the joint owner. (See Article 215.) In the case of mixed property, however, as mentioned in section I, no person may sell his share of mixed property to another unless he has obtained the permission of the joint owner.
- 1089. If some of a number of heirs to land which has devolved upon them by way of inheritance sow seed therein which is their joint property with the permission of the other heirs, or if such other heirs are minors, with the permission of their guardians, the whole of the resulting produce is jointly owned by all of them. If one of them sows his own seed, the resulting produce is his own. He must, however, make good any loss accruing to the share of the other heirs by reason of any decrease in the value of the land caused by the cultivation thereof. (See Article 907.).
- 1090. If one of a number of heirs, without the permission of the others, takes and uses a quantity of money belonging to the estate prior to the division thereof, he must bear any loss occasioned thereby, but is entitled to keep the profits obtained by such transaction.

SECTION III. JOINTLY OWNED DEBTS.

- 1091. If two or more persons are owed a sum of money by some other person and that debt arises from single cause, debt is a debt jointly owned by the two creditors. If the debt does not arise from a single cause, it is not a joint debt. These matters will be dealt with in the following Articles.
- 1092. Any Specific property left by a deceased person is jointly owned by his heirs in proportion to their shares. In the same way, sums owing to him by any other person are jointly owned by the heirs in proportion to their shares.

- 1093. A debt owed by a person and arising by reason of such person having to make good loss caused by the destruction by him of property jointly owned, is jointly owned by the owners of such property.
- 1094. If two persons who jointly own a certain sum of money lend such money to some other; person, the debt is jointly owned by such two persons. If two persons lend money separately to some other person, each one becomes a separate creditor, and the debts are not jointly owned by the two persons.
- 1095. if property jointly owned is sold en bloc, and the share of none of the joint owners is mentioned at the time of the sale, the sum of money to be paid by the purchaser becomes a debt jointly owned. If the amount of the share of the price of the thing sold of each one of them is mentioned at the time of the sale, or the nature thereof, as for example, where it is stated that the share of one of them consists of so much money and the share of the other of so much, or where the share of one is said to consist of sound coin and the share of the other of base coin, whereby their shares are defined, the vendors do not jointly own the price of the thing sold, but each becomes a separate creditor. Similarly, if one on them sells his undivided share to some other person, and the other also sell his undivided share to that person separately, such persons do not jointly own the price of the thing sold, but each of them becomes a separate creditor.
- 1096. If two persons each sell their property en bloc to some other person, as, for example, when one sells a horse and the other a mare at one and the same time, for a certain sum of money, the amount in question becomes a debt jointly owned by the vendors. If each one of them names the price of his own animal as being so much, they each becomes separate creditors, and the total value of their animals does not become a debt jointly owned. Again, if two persons each separately sell property to some other person, the total value of the things sold does not become jointly owned, but each one becomes a separate creditor.
- 1097. If two persons in their capacity as guarantors pay the debt of some other person from property which they jointly own, the amount which they are entitled to recover from the principal debtor is a debt jointly owned.
- 1098. If a person gives an order to two other persons to pay a debt amounting to certain some and the latter pay such debt from property which they jointly own, the sum which they are entitled to receive from such person is a debt jointly owned. If the money they have paid is not jointly owned by them, and the share of each of them is in fact clearly distinguished, the mere fact that they have paid at one and the same time does not make the amount they are entitled to claim from such person a debt jointly owned.
- 1099. If the debt is not jointly owned, each of the creditors may demand payment separately from the debtor of the sum he is entitled to receive and whatever sum either of them receives, is credited to such person's account. The other creditor is not entitled to share therein.
- 1100. If the debt is a joint one, each of the creditors may demand and receive payment of his own share from the debtor separately. If one of the creditors applies to the Court in the absence of the other and asks for payment of his share from the debtor, the Court shall make an order to this effect.
- 1101. Whatever sum is received by one of the creditors is respect to a joint debt is jointly owned by him and the other creditors who receives such sum may not deduct it from his own share alone.
- 1102. If one of the creditors receives his share of a joint debt and disposes of it, the other joint creditor may claim to have the loss he has suffered made good.

  Example:- One of two persons who are joint creditors in equal share for a sum of one thousand piastres receives his share of five hundred piastres from the debtor and disposes of it. The other joint creditor may claim from him the sum of two hundred and fifty piastres for the loss he has suffered. The five hundred piastres still remaining due continues to be owned by the two creditors.
- 1103. If one of the joint creditors while receiving nothing in respect to the joint debt buys goods from the debtor against his share, the other does not becomes a joint owner of the goods. He may,however, claim to have his share made good by the other creditor out of the price of the goods. if they come to an agreement as to their shares, the goods are held jointly between them.
- 1104. If one of the joint creditors comes to a settlement with the debtor as to his share in the joint debt, as for example, where he agrees to accept from the debtor a certain quantity of cloth and does in fact do so, he may either to the other joint creditor an amount of cloth corresponding to the latter's share, out of the cloth he has received, or he may deliver him a sum of money corresponding to the amount of the share of the joint debt which he has forgone.
- 1105. If one of the creditors, as mentioned above, receives a part of the whole of a joint debt, or if he buys property to the value of his share, or if he comes to a settlement with the debtor as to certain property against his claim, the other creditor in any case has the option of either adopting the transaction of the other joint creditor, when, as is set forth in the preceding Articles, He has the right of receiving his share from, or of refusing to adopt the transaction and claiming his share from the debtor. If he fails to obtain anything from the debtor, he has a right of recourse against the creditor who has obtained his share, and the fact that he has not previously adopted the transaction is no bar to his right of recourse.
- 1106. If one of the creditors receives his share of the joint debt from the debtor, and it is accidentally destroyed while in his possession, he is not liable to make good the loss to the other joint creditor in respect to the amount represented by such joint creditor's share therein. The amount remaining to be paid by the debtor belongs to the joint creditor.
- 1107. If one of the creditors employs the debtor for a wage to be reckoned against his share of the joint debt, the other joint creditor may call upon the former to make good to him the amount represented by his share therein.
- 1108. If one of the joint creditors receives a pledge from the debtor in respect to his own share, and the pledge is destroyed while in his possession, the other joint creditor may call upon the former to make good to him the amount represented by his share therein.

  Example:- The amount of the joint debt held in equal shares is one thousand piastres. One of the creditors receives a pledge in respect to his share of five hundred piastres. The pledge is destroyed while in his possession. The other creditor may call upon the former to make good to him a sum of two hundred and fifty piastres, since half the joint debt has been lost.
- 1109. If one of the creditors obtains a guarantor from the debtor in respect to his share to some other person, any sum obtained by such creditor from the guarantor or the person to whom the transfer has been made is shared by the other creditor.
- 1110. If one of the debtors makes a gift of his share in the joint debt to the debtor or releases him therefrom, such gift or release is valid. He is not liable on that account to the other creditor in respect to his share.
- 1111. If one of the joint creditors is respect to a joint debt is responsible for the destruction of the property of the debtor, and the sum represented thereby is set off against the debt, the other joint creditor has the right of receiving his share from him in respect thereto. But if one of the joint creditors was in the debt of the debtor in respect to a debt which came into existence prior to the joint debt in respect to which he has a claim, the two claims are set off one against the other and the other joint creditor cannot claim from him anything in respect thereto.
- 1112. Neither of the joint creditors may extend the due date of postpone the joint debt without the permission of the other.

SUPPLEMENT.

- 1113. If any person sells any property to two other persons, he may claim his share from each one of them separately. He may not claim the amount owing by one of them from the other, unless they are guarantors of each other.

CHAPTER II. PARTITION.

SECTION I. NATURE AND CATEGORIES OF PARTITION.

- 1114. Partition consists of defining an undivided share. That is to say, to distinguish and separate shares from each other by means of some standard, such as a measure of capacity, or of weight, or of length.
- 1115. Partition is effected in two ways. The first consists of specific objects owned jointly, that is, numerous and jointly owned things being separated into parts, the divided shares belonging to each individual being united in one part. This is called partition by units, as where thirty sheep which are jointly owned between three persons are divided up into tens.

  The second consists of dividing a specific thing owned jointly and of allotting a part in respect to the undivided shares relating to each portion. This is known as partition by allotment, or individual partition, as where a piece of land is divided into two parts.
- 1116. Partition consists on the one hand of separation and on the other of exchange. Examples:-

(1). The two persons own a kile of corn jointly in equal shares. Each has a half share in each grain. When it is divided into two parts, the division is by partition by units, one part being given to one and the other part to the other joint owner. Each one is then considered to have separated his half share and to have exchanged his own half with the half share of the other.

(2).Two persons are joint owners of a piece of land which they hold in equal shares in respect to every part. The land is divided into two by partition by allotment, and a part is given to each one of them. Each one is considered to have separated his own half share and to have exchanged it with the half share of the other joint owner.

- 1117. Separation is preferred in the case of things the like of which can be found in the market. Consequently, each joint owner of jointly owned things the like of which can be found in the market may take his own share in the absence of the other and without his permission. The division, however, is not complete until the share of the absent joint owner has been handed over to him. If the share of the absent joint owner is destroyed before being handed over, the share which has been received by the other joint owner is jointly owned between them.

- 1118. In the case of things the like of which cannot be found in the market, exchange is preferred. Exchange may take place by agreement of the parties or may be made as the result of a judgement by the Court. Consequently, one of the joint owners may not take his share of any specific object the like of which cannot be found in the market, in the absence of the other and without his permission.

- 1119. Things estimated by measure of capacity, things estimated by weight and things measured by enumeration and which closely resemble one another, such as walnuts and eggs, are all things the like of which can be found in the market. But things estimated by weight and which change in accordance with the difference of craftsmanship, such as hand-made pottery, are things the like of which cannot by found in the market. Things which are similar to each other, though of a different nature, and which are mixed together in such a way that they cannot be distinguished and separated from each other, such as barley and corn, are things the like of which cannot be found in the market.

  Things measured by length are also things the like of which cannot be found in the market. But things measured by length and sold at so much per yard, there being no difference between the undivided units thereof, such as cloth of a particular type, and linen goods produced by a process of manufacture, are things the like of which can be found in the market.

  Things measured by enumeration and which are dissimilar from each other and is respect to which there is a difference in value as regards the undivided units thereof, such as animals, melons and water melons, are things the like of which cannot be found in the market.

  Books written by hand are things the like of which cannot be found in the market. Printed books are things the like of which can be found in the market.

- 1120. Partition by units and partition be allotment are each divided into two categories. The first is partition by consent. The second is partition by order of the Court.

- 1121. Partition by consent consists of a partition made by agreement of the two joint owners of property held in absolute ownership, whereby they mutually agree to a division between them, or whereby the Court makes a division with the assent of all parties.

- 1122. Partition by order of the Court consists of a partition which is obligatory and has the force of law, and which is made upon the application of certain of the owners of the jointly owned property.

SECTION II. CONDITIONS ATTACHING TO PARTITION.

- 1123. The thing divided must be some specific object. Consequently, any partition of a debt jointly owned prior to being received is invalid.

  Example:- A deceased person has various sums of money owing to him. The allocation of so much money owing to him by A to one of his heirs and so much owing to him by B to another of his heirs is invalid. Should one of the heirs obtain any sum of money in this way, the other heirs become joint owners therein. (See Chapter i, Section iv).

- 1124. NO partition is valid until the shares have been identified and separated.

  Example:- One of the joint owners of a heap of corn requests the other joint owner to take one half of the heap, adding that he will take the other. The partition is invalid.

- 1125. The thing divided must be the property of the joint owners held in absolute ownership at the time of partition. Consequently, if some person appears who is entitled to the whole of the property after the partition has been made, such partition becomes null and void. Similarly, if someone appears who is entitled to an undivided share therein such as a half or a third, the partition is invalid and the property must be divided again. Again, if someone appears who is invalid, and the remainder is jointly owned by the other persons holding shares in the property. If someone appears who is entitled to some specific part of a share only, or an undivided part, the owner of such undivided share has the option of either cancelling the partition, or of agreeing thereto, and of exercising a right of recourse against the other joint owner in respect to the amount short.

  Example:- A piece of land measuring one hundred and sixty ARSHUNS is divided into two equal shares. Someone appears who is entitled to a half of one share. The owner of such share may, at his option, cancel the partition, or may exercise a right of recourse against the other; joint owner to the extent of a quarter of his share, that is to say, he may take from his share a portion measuring twenty ARSHUNS. If someone appears who is entitled to a specific part of each share, the partition cannot be cancelled if it has been made in equal shares. If one has received less and the other more, the greater amount only is held to be valid, the matter being regarded as though only one person had appeared entitled to a fixed portion of one share. The person to whose share the greater amount is attributed as stated above has the option either of cancelling the partition, or of having recourse against the other joint owner in respect to the amount which he has lost.

- 1126. Partition by an unauthorised person is subject to ratification, which may be oral, or in writing, or by conduct.

  Example:- A divides jointly owned property on his own initiative. The partition is neither permissible nor executory. But if the owners ratify by signifying their assent, or if they deal with their separate shares by way of absolute ownership, that is to say, if they perform any act indicative of a right of ownership, such as sale or hire, the partition is valid and executory.

- 1127. The partition must be equitable. That is to say, it must be made in accordance with the shares due to each joint owner, and no one may in any way be deprived of the full amount to which he is entitled. Consequently, an action for flagrant misrepresentation will lie in a case of partition. If the person in whose favour the partition has been made, however, admits that he has received what he is entitled to, his admission is a bar to an action for flagrant misrepresentation.

- 1128. In the partition by consent, the consent of each of the persons sharing in the partition must be given. Consequently, if one of them is absent, partition be consent is invalid. If one of them is a minor, the tutor or guardian stands in his place. In the absence of tutor or guardian, the partition is subject to the order of the Court, which will appoint a guardian through whom the partition will be carried out.

- 1129. Partition made by order of the Court is subject to a request being made to that effect. Any compulsory partition made by the Court in the absence of any request made by one of the parties is invalid.

- 1130. If some of the joint owners apply for partition and others oppose such application, the Court shall make a compulsory partition if the property jointly owned is capable of partition, as is set forth in Section 3 and Section 4. Otherwise no partition shall be made.

- 1131. Capable of partition refers to jointly owned property which is fit for partition. Thus, the benefit to be derived from such property must not be lost by the partition.

SECTION III. PARTITION BY UNITS.

- 1132. Specific objects which are jointly owned and which are of one type, are subject to partition by order of the court. That is to say, the Court will order the partition of such property upon the application of some only of the joint owners, whether the property in question consists of things the like of which can be found in the market or not.

- 1133. In the case of partition of things the like of which can be found in the market, and which are of one type, each of the joint owners receives what he is entitled to and becomes absolute owner thereof, since there is no defers between the various undivided units thereof, and partition cannot injure any one of the joint owners. Thus, upon the partition of a quantity of corn jointly owned by two persons, in accordance with their shares, each of them receives what he is entitled to, and becomes the independent owner of the corn falling to his share. The same applies in the case of a number of dirhems of bar gold, or of a number of okes of bar silver, or of bar copper or iron, or of a number of pieces of woollen cloth of one type or of a number of pieces of linen or a quantity of eggs.

- 1134. If a difference exists between things the like of which cannot be found in the market, and which are of one type, but such difference is so small that it may be said not to exist at all, such things are considered to be capable of partition as referred to above.

  Example:- Five hundred sheep owned jointly by two persons are divided between them in accordance with their shares. Each one is considered to have received the identical things to which he is entitled. The same thing applies in the case of so many hundreds of camels and so many hundreds of cows.

- 1135. Specific objects which are jointly owned and which are of different types, are not subject to partition by the Court, Whether consisting of things the like of which can be found in the market or not. That is to to say, the Court will not give an order for their compulsory division by units upon the application of one of the joint owners only.

  Example:- An order of the Court for the partition of property whereby one of the joint owner receives so many kiles of corn, and another so many kiles of barley, as being equivalent thereto; to one so many sheep, to another so many camels or cows, as being equivalent thereto; to one a sword, to the other a set of saddlery; to one a country house, to the other a shop or a farm,is invalid. But if the joint owners agree thereto, a partition by order of the Court, as mentioned above, is valid.

- 1136. Pots which differ in accordance with the craftsmanship are considered to be different types, even though made from metal of one type.

- 1137. Ornaments, large pearls and jewellery are also specific objects of different types. But small jewels not differing from each other in value, such as tiny pearls and small diamonds known as counting stones, are considered to be of the same type.

- 1138. A number of country houses, shops and farms, are also of different types and cannot be divided by partition by units.

  Example:- One of a number of country houses may not be given to one joint owner and another to a second in pursuance of an order for partition given by the Court. Each of them may be divided by partition by allotment as set out below.

SECTION IV. PARTITION BY ALLOTMENT.

- 1139. Any specific piece of property which is jointly owned is capable of partition, provided such partition does not injure any of the owners thereof.

  Examples:-

  (1). A piece of land is divided and buildings erected on each portion, trees are planted and wells sunk. In this way, the benefit to be divided from the land is preserved.

  (2). A country house is divided into men's and women's quarters, so that it becomes two separate houses. The benefit to be derived from the country house, which was to dwell therein, is not lost. Each of the joint owners becomes the independent owner of a separate house. Consequently, both in the case of the land and of the country house, a division by order of the Court is valid. That is to say, if one of the owners desires partition and the other does not, the Court may give an order for compulsory partition.

- 1140. Should the partition of some specific piece of property jointly owned be advantageous to one of the owners thereof, and disadvantageous to the other, that is to say, should the benefit to be derived therefrom be lost to him, and should the person deriving some advantage therefrom desire partition, the Court may give an order for partition.

  Example:- A house is jointly owned and the share of one of the joint owners is so small that after partition he is unable to derive benefit therefrom by dwelling therein. The joint owner holding the greater share desires partition. The Court will give an order fro partition.

- 1141. Partition may not be ordered by the Court of some specific property which is jointly owned in cases where such partition would be injurious to each of the joint owners of such property.

  Example:- If a mill is divided, it can no longer be used as a mill, and for this reason the benefit to be derived therefrom is lost. Consequently, the Court will not order partition of the mill upon the application of one of the joint owners only. It may, however, be divided by consent. Baths, wells, water pipes, a small room, a wall between two houses, are of the same type. Merchandise such as a horse and a carriage, a saddle, a cloak, the stone for a ring, which must be broken or split, are also of this nature. In no case may division be ordered by the Court.

- 1142. The partition of the pages of a book jointly owned is invalid: and the partition volume by volume of a book in several volumes is likewise invalid.

- 1143. If one of the joint owners of a road owned by two or more person to which no other person has the right of access desires partition, and the others object, it must first be ascertained as to whether, if partition is effected, each of the joint owners will have a road. If so, the road will be divided. If not, no order will be made for compulsory partition. Nevertheless, if each one has a separate road and entrance, partition may be made.

- 1144. A right of flow jointly owned is similar to a road jointly owned. If one of the owners desires partition and the other objects, and there is sufficient room for each one for the flow of water after partition, or there is some other place to which the water may flow, the partition may be made, but not otherwise.

- 1145. A person may sell a road which he owns in absolute ownership, subject to his retaining a right of way thereover, in the same way that upon the partition of a piece of real property jointly owned by two persons, the absolute ownership of a road jointly owned may be retained by one, and the other may be given a right of the way thereover only.

- 1146. Upon the partition of a house, a wall separating the two shares may remain in the joint ownership of the owners thereof, or such house may be divided in such manner that the wall becomes the property in absolute ownership of one of them only.

SECTION V. METHOD OF PARTITION.

- 1147. If property jointly owned is estimated by measure of capacity, it is divided by such measure; if it is estimated by weight, it is divided by weight; if it estimated by number, it is divided by number; if it is estimated by length, it is divided by length.

- 1148. Land being measured by length, is divided by length. But trees and buildings situated thereon are divided by estimating the value thereof.

- 1149. Should it be found upon the partition of a country house that the building represented by one share is more valuable that the building of the other, land in addition is taken from the site of the other share, if this course is possible, equivalent to the difference in value, and added thereto. If this is not possible, a proportionate amount of money is added.

- 1150. If two persons who are joint owners of a house desire partition thereof so that one receives the upper portion and the other the lower portion, both the upper and the lower portions are valued, and the partition is made on the basis of the value.

- 1151. If a country house is to be divided, the person carrying out the partition must first make a plan thereof on paper, must measure the land upon which it is built, value the buildings thereof, and make a settlement and adjustment in accordance with the shares of the owners thereof. If possible he must divide any right of way, or right of taking water, or right of flow, so that they are completely independent the one from the other. They must be called share number one, two and three respectively. Afterwards, lots must be drawn. The first name turned up gets the first share, the second name gets the second share, and the third name gets the third share. If there are more than three, the same procedure is followed.

- 1152. If taxes levied by the State are for the protection of the interests of the people, they must be levied in accordance with the amount of the population. Women and children are not included in the register. If they are levied for the protection of property, they are levied in accordance with the amount of such property, because, as is mentioned in Article 87, disadvantage is an obligation accompanying enjoyment.

SECTION VI. OPTIONS.

- 1153. An option conferred by contract, an option of inspection, and an option for defect are attached to the various types of partition, as in the case of sale.

  Example:- Property jointly owned is divided by agreement between the owners thereof. One receives so many kiles of corn and the other so many kiles of barley, or one of them receives so many sheep and the other so many cows. If one of the joint owners has a contractual option, he may, during that period, either agree to the partition, or cancel it. If one of them has not yet seen the divided property, he similarly has an option upon seeing it. If the share of one of them proves to be defective he may either accept it or reject it.

- 1154. An option conferred by contract, an option of inspection, and an option for defect are also attached to things the like of which cannot be found in the market, upon the partition thereof.

  Example:- Upon the partition of one hundred sheep among the owners thereof in proportion to their shares, one of the owners may, if he has stipulated therefor by contract, exercise an option of accepting or rejecting the partition within a period of so many days. If he has not yet seen the sheep, he similarly may exercise an option upon seeing them. If a defect of long standing is revealed in the sheep which fall to the share of one of them, he likewise has an option and may either accept them or reject them.

- 1155. Upon the division of things the like of which can be found in the market, and which are of the same type, no option is conferred by contract or upon inspection. An option, however, exists for defect.

Example:- A heap of corn belonging to two persons jointly is divided. An option conferred by contract to be exercised within a certain number of days is invalid. If one of them has not seen the corn, he cannot exercise an option upon seeing it. But if one of them is given the upper part and the other the lower, and the lower portion proves to be rotten, the owner has the option of rejecting or accepting it.

SECTION VII. CANCELLATION AND RESCISSION OF PARTITION.

- 1156. When the lots have all been drawn, the partition is complete.
- 1157. When the partition has been completed, there cannot be any withdrawal therefrom.
- 1158. If one of the joint owners wishes to withdraw while the partition is being carried out, as for example, where the majority of the lots have been drawn and there remains one only, the withdrawal is valid if the partition is one made by consent. It is invalid, however, if it is made by order of the Court.
- 1159. If the joint owners cancel and rescind the partition by agreement after such partition has been carried out, they may again become joint owners of the property as heretofore.
- 1160. If flagrant misrepresentation is apparent during the partition, the partition is cancelled, and an equitable partition is made afresh.
- 1161. If after the partition of an estate if proves that the deceased person was in debt, the partition is cancelled. Nevertheless, if the heirs pay debt, or if the creditors relinquish their claims, or if there is other property belonging to the deceased and the debt is satisfied therefrom, the partition is not cancelled.

SECTION VIII. eFFECT OF PARTITION.

- 1162. Each of the joint owners becomes the independent owner of his own share after partition. No one has any further interest in the share of the other. Each one of them may deal with his own share precisely as he wishes, as will be set forth in Chapter III. So that if a house jointly owned by two persons is divided, one of them obtaining the buildings and the other the vacant land, the owner of the land may dig well wells, or make a channel for water, or erect a building of any height he wishes, even to the extent of depriving the owner of the building of air or sun-light, and the latter is powerless to prevent the former from doing so.
- 1163. Upon the partition of land, trees are included therein without being mentioned. Upon a farm being partitioned, trees and buildings are also included without being mentioned. That is to say, the trees and buildings belong to the person to whose share they fall. There is no need for the inclusion of any particular statement or of any general expressions, such as that the partition includes all rights or all appurtenances.
- 1164. Upon the partition of either lands or farms, crops and fruits are not included therein unless specifically mentioned and they remains jointly owned as heretofore, and this, whether any general expression was used when the partition was carried out, such as that the partition includes all rights, or not.
- 1165. Any right of way or of flow over adjoining lands attaching to the partitioned property is in every case included in the partition. That is to say, the right is question belong to the person who obtains the share to which they are attached, and this, whether at the time the partition is carried out, the partition is stated to include all rights or not.
- 1166. If at the time the partition is carried out, it is stipulated that there shall be a right of way or right of flow over another share, the stipulation is valid.
- 1167. If the road belonging to one share exists in the other share, and no stipulation is made for the retention thereof at the time of the partition, and it is possible to place the road elsewhere, this shall be done, whether at the time of partition the partition was stated to include all rights or not. If the road cannot be placed elsewhere, however, and at the time of the partition, all rights were stated to be included, the road shall be included in the partition without any change. If so such expression of a general nature has been included, the partition shall be cancelled.

  In this connection, the right of flow follows the same rule as the right of way.
- 1168. If a person has a right of way through a house jointly owned by two other persons, and the two joint owners desire to partition such house, the owner of the right of way cannot prevent them from so doing. The joint owners, however, upon carrying out the partition, must leave the road intact. If all three agree to sell the house together with the road and the road is jointly owned between the three, the price is divided between them. If the absolute ownership of the road belongs to the owners of the country house, and such person merely possesses a right of way, each one takes what he is entitled to receive. Thus, if the land is valued on one occasion with the right of way and on another without, the difference between the two belongs to the owner of the right of way. The balance belongs to the owners of the house.

  The same rule applies in the case of a right of flow. That is to say, if one person has a right of flow over the house of another which is jointly owned and the owners of the house desire the partition of such house, the right of flow remain undisturbed.
- 1169. If a person owns a dwelling situated in the courtyard of a country house, and possesses a right of way over the courtyard, and the owners of the country house desire to partition the dame, the owner of the dwelling cannot prevent them from doing so. Upon carrying out the partition, however, they are obliged to leave him a road as wide as the breadth of the door of the dwelling.
- 1170. If a country house is divided into two and there is a wall separating the two parts, and the ends of the beams of the wall of one part project on to the wall which is jointly owned, and at the time of the partition a stipulation has been made that the beams shall be removed, such beams shall be removed, but not otherwise. The same rule applies when a partition is made subject to the condition that the wall separating the two parts shall belong to one joint owner is absolute ownership, and the beams the ends of which rest upon such wall belong to the other.
- 1171. The branches of trees situated in one part and which project into the other part may not be cut off unless a condition has been made to that effect at the time the partition was made.
- 1172. Upon the partition of a house jointly owned having a right of way over a private road, each of the joint owners may construct doors and open windows looking on to such road. The other owners of the road may not prevent them from so doing.
- 1173. If one of the joint owners of a piece of property held in absolute ownership which is capable of partition erects a building for himself without the permission of the other, and the other joint owner asks for partition, such partition shall be made. If the building falls to the share of the person who built it, such building shall remain intact. If the building falls to the share of the other joint owner he may have such building pulled down.

SECTION IX. PARTITION OF USUFRUCT.

- 1174. Partition of usufruct consists of the division of benefits.
- 1175. There can be no partition of usufruct in the case of things the like of which can be found in the market. partition of usufruct may be had in the case of those things the like of which cannot be found in the market, the usufruct of which may be enjoyed, while the identical things remain intact.
- 1176. Artesian of usufruct is of two categories. The first category consists of a partition of usufruct limited by time.

  Examples:-

  (1). Two persons are joint owners of land which they hold subject to the condition that one shall cultivate such land one year, and the other the second year.

  (2). Each of the joint owners of a country house own such house on the terms that they shall each dwell therein in turns for a period of one year.

  The second category consists of a partition of usufruct limited as to place.

  Examples:-

  (1). Two persons are joint owners of land subject to the condition that one shall cultivate the first half and the other the second half.

  (2). The joint owners of a country house agree to live one in one part and the other in the other part thereof, or one in the upper part and the other in the lower part thereof.

  (3). Two persons own two houses jointly. They agree to live one in one house and the other in the other.
- 1177. The joint owners of an animal may validly agree to share the usufruct thereof by using such animal in turns. They may also agree to share the usufruct of two animals by one using one of them and the other the other.

- 1178. Partition of usufruct limited by time is in the nature of an exchange. Thus, one of the joint owners is considered to have exchanged his share of the benefit accruing to his turn for that of the share of the benefit accruing to the turn for that of the share of the benefit accruing to the turn of the other. From this point of view, partition of usufruct limited by time is in the nature of hire. Consequently, in partition of usufruct limited by time, a period of time must be mentioned, such as so many days or months.
- 1179. Partition of usufruct limited by place is in the nature of separation. Thus, the usufruct accruing to two joint owners of a country house is undivided, that is to say, it embraces every part of such house. Upon partition, the usufruct of one of the joint owners is considered to be concentrated in one part of such country house, and the usufruct of the second joint owner in the other part thereof. Consequently, there is no necessity to mention a period of time in the case of partition of usufruct limited as to place.
- 1180. In the case of partition of usufruct limited as to time, the commencement of the period, that is to say, determining who of the joint owners is to enjoy the usufruct first, is decided by drawing lots. Similarly, in the case of a partition of usufruct limited as to place, the place is determined by drawing lots.
- 1181. If one of the joint owners of several things jointly owned desires a partition of the usufruct thereof, and the other joint owner objects thereto, a partition will be enforced if the usufruct of the jointly owned property is of the same type. If the usufruct is of a different type, the partition will not be enforced.

  Example:- One of the joint owners of two houses jointly owned desires a partition of the usufruct whereby he shall live in one and the other joint owner is the other; or in the case of two animals jointly owned, one of the joint owners desires a partition of the usufruct whereby one of them shall use one animal, and the other the other. If the other joint owner objects thereto the partition may be enforced. But if one them desires partition whereby one is to live in one house and the other is to be let on hire as a bath, or whereby one is to live in one house and the other is to cultivate land, such partition is valid if it is by consent; but if one of the joint owners objects thereto, the division of the usufruct cannot be enforced.
- 1182. If one of the joint owners of property which is capable of partition desires partition, and the other desires partition of the usufruct, the claim to partition will be upheld. If none of the joint owners desires partition, but one of them desires partition of the usufruct and the other objects, partition of the usufruct will be enforced.
- 1183. If one of the joint owners of some specific object which is not capable of division desires partition of the usufruct and the other objects, partition of the usufruct will be enforced.
- 1184. The rent of real property jointly owned, such as a ship, mill, a coffee-shop, an inn, and a bath, which are let on hire to the public, is divided between the joint owners in accordance with their shares. If one of the joint owners objects to giving his share on hire, partition of the usufruct will be enforced. If the rent accruing to the share of one of the joint owners during his turn is disproportionately large, the amount in excess is divided among the joint owners.
- 1185. Each joint owner may, after a partition of usufruct limited as to time has been carried out, make personal use of the real property jointly owned, when his turn comes, and in the case of a partition of usufruct limited as to place, may make personal use of the part falling to his own share. He may also obtain rent therefore by giving it on hire to some third party.
- 1186. If after a partition of usufruct has been made, the joint owners give their respective shares on hire, and the revenue accruing thereby to one of them is greater than the other, the latter does not share in such excess.

  But if a partition of usufruct arising out of profit is made, as, for example, whereby one of the joint owners receives the rent of a house for one month and the other for another month, any excess amount is jointly held. But if a partition of usufruct is made whereby the profit arising out of one of two houses is to go to joint owner and the other to the other, and the profit arising out of one is greater than that of the other, the latter does not share therein.
- 1187. There may be no partition of usufruct in the case of any specific property.

  Example:- The partition of the usufruct of the fruit of trees jointly owned, or of the milk or wool of animals jointly owned, on the terms that one joint owner shall gather the fruit of a certain number of such trees and the other the fruit of some other; number of trees, or that one shall take the milk and wool of one flock of sheep, and the other the milk and wool of the other, is invalid, since they relate to specific property.
- 1188. If the joint owners divide the usufruct of their shares by consent, one of them alone may subsequently cancel such partition. If one of them, however, has given his share on hire to some other person, the other cannot cancel the partition of usufruct until after the termination of the period of hire.
- 1189. one of the joint owners alone may not cancel a partition of usufruct carried out by order of the Court. The whole of the joint owners, however, may cancel such partition by consent.
- 1190. If one of the joint owners wishes to sell his share or to divide it, he may cancel the partition of usufruct. But any partition of usufruct which is sought to be cancelled without any due cause and whereby the jointly owned property will merely return to its former state, will be disallowed by the Court.
- 1191. A partition of usufruct continues to be valid after the death of one or all of the joint owners.

CHAPTER III. WALLS AND NEIGHBOURS.

SECTION I. RULES OF LAW RELATING TO PROPERTY OWNED IN ABSOLUTE OWNERSHIP.

- 1192. Any person may deal with his property owned in absolute ownership as he wishes. But if the rights of any other person are concerned therein, the owner of such property may not deal with it as though he were the independent owner thereof.

  Example:- The upper storey of a building is owned in absolute ownership be A and the lower storey similarly by B. A has a right of support from B and B has a right to be protected from sun and rain. Neither may perform any act which will prejudice the other without obtaining permission from him, and neither may pull down his part of the building.
- 1193. If there is one door giving on to the street for both the upper and lower storeys, both owners may make use thereof. Neither may prevent the other from coming in or going out thereby.
- 1194. Whoever owns a piece of land in absolute ownership is likewise owner of what is above it and what is below it. That is to say, he may deal with it as by erecting buildings on a piece of land he owns in absolute ownership, and raising it as high as he wishes. He may also dig the ground and make store-rooms therein and dig wells as deep as he wishes.
- 1195. No person may extend the eaves of a room which he has constructed in his house, over his neighbour's house.

  If he does so, the amount which so extends over his neighbour's house may be removed.
- 1196. If the branches of trees in any person's garden extend into the house or garden of his neighbour, the owner may be made by the neighbour to tie up such branches and thus bring them back into his own garden, or to cut them down and thus obtain a clear current of air. He may not, however, cut down the tree on the grounds that the shadow of such tree is injurious to the cultivation in his garden.
- 1197. No person may be prevented from dealing with his property which he owns in absolute ownership. Nevertheless, if such person by so doing causes great injury to any other person, he may be prohibited therefrom, as will be set forth in Section II.

SECTION II. RELATIONS OF ONE NEIGHBOUR TO ANOTHER.

- 1198. Any person may raise the wall of his property owned in absolute ownership to any extent he wishes, and may do anything he desires, and, providing that he does not cause his neighbour any great injury thereby the latter cannot prevent him from doing so.
- 1199. Great injury consists of anything which causes damage to a building, that is to say, which weakens it and causes it to collapse or makes it impossible for it to be put to the use for which it was originally intended, as in the case of a dwelling house.
- 1200. Great injury, caused in any way whatsoever, must be removed.

  Examples:-

  (1). A forge or a mill is erected adjacent to a house. The house is weakened by the hammering from the forge, or the turning of the mill wheel; or it becomes impossible for the owner of such house to dwell therein by reason of the great quantity of smoke given off by a furnace or a linseed oil factory, erected in close proximity thereto. These acts

amount to great injury, which must be removed.

(2). A constructs a water channel on a piece of land adjoining B's house. Water is brought along it to a mill and the walls of B's house are weakened: or A makes a rubbish heap at the foot of the neighbour's wall and throws sweepings there and the walls becomes rotten. The owner of the house may have the injury removed.

(3). A construct a threshing floor near to B's house and the dust coming therefrom makes it impossible for B to dwell in his house. B may have the injury removed.

(4). A erects a high building near a threshing floor belonging to B and thereby cuts off the flow of air to the threshing floor. This act amounts to great injury and may be stopped.

(5). A opens a cook shop in the cloth merchants' market. The smoke therefrom is deposited on his neighbours goods and causes great injury thereto. The injury may be stopped.

(6). The sewer in A's house is broken and sewage flows into his neighbour's house. This amounts to great injury, and upon the neighbour bringing an action, A must repair the sewer and put it in order.

- 1201. Any interference with benefits which are not fundamental necessities, such as cutting off the air or the view of a house, or preventing the entrance of sunlight, does not amount to great injury. If light is entirely cut off, however, this amounts to great injury.

  Consequently, if a person erects a building and cuts off the light from the window of a room belonging to his neighbour, the room being darkened to such an extent that it is impossible to read anything written therein, the act amounts to great injury and may be stopped; and it may not be argued that light can come in through the door, since the door must be kept closed on account of the cold and for other reasons. If the room has two windows, however, and a building is erected and the light of one of them is cut off as mentioned above, such act does not amount to great injury.

- 1202. The fact that places which are frequented by women, such as a kitchen, the head of a well, and the courtyard of a house are overlooked, is considered to amount to great injury. Consequently, if a person constructs a new window in his house whereby he overlooks quarters frequented by the women of an adjoining neighbour, or of the owner of a house on the other side of the street, or if he overlooks them from a window in a nearby built house, an order shall be given for the removal of such injury. Such person may also be obliged to remove such injury by building a wall or constructing a partition in such a way that the women cannot be forced to close up the window. If quarters occupied by women can be seen through the interstices of a wall made of brushwood, the owner of the wall may be ordered to close such interstices. He may not, however, be obliged to tear the brushwood down and build a wall. (See Article 22)>

- 1203. If a window is constructed in a place which is of the same height as a man, a neighbour of the person constructing such window may not have it removed by alleging that it is probable that he will overlook the women's quarter of his neighbour by placing a ladder there. (See Article 74).

- 1204. A garden is not considered to be women's quarters. Consequently, if a person is unable to see the women,s quarters of his neighbour,s house, but is able to see his garden, and consequently the women, but merely on the occasions when they go out into the garden, his neighbour may not demand that his view into the garden shall be stopped.

- 1205. If a person climbs up the fruit trees in his garden, and thereby overlooks the women's quarters of his neighbour, such person must give information that he intends to climb such trees, in order that the women may cover themselves. Should he fail to give such information, the Court may forthwith prohibit him from climbing such trees.

- 1206. If upon the partition of a country house jointly owned by two persons, the share falling to one overlooks the women's quarters of the other, the joint owners shall be ordered to construct a joint partition.

- 1207. If any person deals with property owned in absolute ownership in some manner authorised by law, and some other person constructs a building by the side thereof whereby he suffers injury, he himself alone must remove such injury.

  Examples:-

  (1). The women's quarters in a house newly constructed ore overlooked by the windows of an old house. The owner of the newly constructed house must himself remove the injury. He may not call upon the owner of they old house to do so.

  (2). A person constructs a house on apiece of land adjoining a blacksmith's forge, and alleges that the hammering in the forge has caused great injury to his house. He cannot stop the forge from working.

  (3). A person builds a house in a place where a threshing floor has been established for some time past and alleges that the dust is being deposited in his house. He cannot call upon the owner of the threshing floor to stop work.

- 1208. If a person who owns an old house with windows looking on to a piece of vacant land belonging to his neighbour has such house destroyed by fire, and the neighbour builds a house on the land in question, and thereafter the owner of the old house has it rebuilt in its former state and from the windows thereof overlooks the women's quarters of the new house, the injury must be removed by the owner of the new house himself. He cannot oblige the owner of the old house to remove the injury.

- 1209. If a person constructs new windows in his house and is unable to overlook the women's quarters of his neighbour by reason of the latter having constructed a high room between, and the room is later pulled down by the neighbour with the result that the women's quarters of the latter can be seen, the neighbour cannot call upon such person to stop the view from the windows, or to close them up, but must remove the injury himself.

- 1210. One of the joint owners of a wall may not raise such wall without the permission of the other, nor may he erect a kiosk thereon or any similar thing, whether causing injury to the or not. But if one of them wishes to place beams on the ground in order to build a room, that is to say, if he wishes to place them upon the edges of the beams on the wall, he may not be prevented from doing so. The other joint owner, however, has the right of placing the same number of beams. He may not, however, put more than half the total number of beams which can be supported and may not exceed that number. If both of them originally had an equal number of beams upon such wall, and one of them increases his number of beams, the other may prevent him from so doing.

- 1211. One of the joint owners of a wall may not have the position of the beams on such wall changed to the right or left or up or down. If the beams, however, are placed in an elevated part of the wall, he may put them on a lower part thereof.

- 1212. If any person constructs a cesspit or a sewer near a well of water belonging to some other person, and contaminates the water thereof, he may be made to remove the injury. If it is impossible to remove the injury, he may be made to close up the cesspit or sewer. Again, if any person constructs a sewer near to a water channel, and the dirty water from such sewer flows into the channel and causes great injury thereto, and no other way can be found to remove such injury than by closing it, the sewer shall be closed.

- 1213. If any person who owns a house on either side of a street wishes to construct a bridge from the one to the other, he shall be prevented from doing so. If he does so, and the bridge causes no injury to the passers by, such bridge shall not be pulled down. There is, however, no right to permanency in the case of bridges and resting places constructed over the public highway. Consequently, if after a bridge constructed over the public highway as mentioned above has been pulled down, and the owner wishes to construct another such bridge, he may again be prevented from so doing.

- 1214. anything which causes great injury to passers by on the public highway may be removed, such as low projecting balconies and resting places, even though they have been there for a long period of time. (See Article 7).

- 1215. Any person who wishes to repair his house may make quickly on one side of the road for use on his building, provided that he does not thereby cause any injury to the passers by.

- 1216. When necessary, the property of any person held in absolute ownership may be taken for its value by order of the authorities and made part of the road. He may not be deprived of ownership thereof, however, until he has been paid the price. (See articles 251 and 262).

- 1217. Provided no injury is done to passers by, any person may obtain any surplus land on the highway by paying its estimated price to the Government, and attach such land to his house.

- 1218. Any person whatsoever may construct a door giving on to the public highway.

- 1219. No person who is not the owner of a right of way in a private road may construct a door looking thereon.

- 1220. A private road is like the jointly owned property held in absolute ownership of persons having a right of way. Consequently, none of the owners of a private road may make any fresh construction therein without the permission of the other, whether such construction is prejudicial or not.

- 1221. One of the owners of a private road may not allow water to flow from a house which he has newly built, on to such road, without the permission of the other owners.
- 1222. If any person closes up a door giving on to a private road, he does not thereby lose his right of way thereover. Consequently, if he sells his house at some later date,the purchaser may again construct the door.
- 1223. Persons passing along the public highway have the right, if there is a great crowd of people therein, of entering a private road. Consequently, the owner of a private road may not sell it by agreement among themselves, nor may they divide it among themselves, nor may they close up the entrance thereto.

SECTION IV. RIGHT OF WAY, RIGHT OF AQUEDUCT, RIGHT OF FLOW.

- 1224. In case of right of way, right of aqueduct and right of flow, ancient rights shall be observed. That is to say, rights acquired in the remote past are left as they were, because, as is laid down in Article 6, things which have been in existence from time immemorial shall be left as they were; and until some proof to the contrary is produced, they shall not be changed. But anything existing from time immemorial which is contrary to law is invalid. That is to say, if any act which has been performed was originally illegal and has existed from time immemorial, such act is invalid, and, if it causes great injury, shall be removed (See Article 27).

  Example:-If the dirty water of a house has flowed from time immemorial into the public highway, and causes injury to the passers by, the ancient rights are disregarded, and the injury must be removed.
- 1225. If any person has a right of way over the land of another;, the owner of the land cannot prevent him from passing and crossing over the land.
- 1226. A person who has given something for nothing, to be consumed, has a right to revoke the gift. If injury is inflicted by consent, such consent may be withdrawn. Consequently, If a person who has no right of way over the land belonging to another exercises a right of way thereover for a certain period, with the permission of the owner of such land only, the latter may, whenever he wishes, prevent him from exercising the right.
- 1227. If any person has right of way over a defined pathway on the land of some other person, and the owner of the land erects a building on such pathway with the permission of the owner of the right of way, the latter loses his right of way, and has no right of disputing the matter with the owner of the land. (See Article 51).
- 1228. If a cutting or a water channel belonging to one person runs by right across the land of another, the owner of the land may not endeavour to prevent the former from exercising his right in the future. If such cutting and water channel are in need of improvement and repair, the owner thereof shall be allowed access thereto, if this is possible, and may make such improvements and repairs, however, without entering upon the land, and the owner of the land will not give the necessary permission, the Court shall oblige him either to grant permission for entry on the land, or to carry out the repairs.
- 1229. If the rain water of a house has flowed on to the house of a neighbour from time immemorial, the latter may not thereafter seek to prevent such flow.
- 1231. No person may cause the water from a newly constructed room to flow into the house of some other person.
- 1232. The owner of a house which is burdened by a right of sewage may not stop the right of flow, nor any person who purchases such house.
- 1233. The owner of sewer the sewage of which flows through the house of some other person must, if the sewer becomes full, or breaks, thereby causing great injury to the owner of the house remove such injury.

CHAPTER IV. JOINTLY OWNED PROPERTY WHICH IS FREE.

SECTION I. THINGS WHICH ARE FREE AND THINGS WHICH ARE NOT FREE.

- 1234. Water, grass and fire are free. The public are joint owners of these three things.
- 1235. Water flowing under ground is not the absolute property of any person.
- 1236. Wells which have not been made by the labour of any particular person, the benefit of which may be enjoyed by the public, are the jointly owned and free property of the public.
- 1237. Seas and large lakes are free.
- 1238. Rivers which belong to the State and are not the property owned in absolute ownership of any person, are those rivers the bed of which does not pass through the property of a group of persons owned in absolute ownership. All such rivers are free. Examples of such rivers are the Nile, the Euphrates, the Danube and the Tonja.
- 1239. Rivers which are the property of individuals owned in absolute ownership, that is to say, rivers which, as stated above, flow through the property of persons owned in absolute ownership are of two categories.

  The first category consists of rivers the water of which is divided between the joint owners of the land through they flow, but is not completely exhausted and continues its course through vacant land which is free to public. Rivers of this class are called public rivers, since they are at the disposal of the public. No right of pre-emption attaches to these rivers.

  The second category consists of private rivers, the water of which are divided between the land belonging to a limited number of persons, and which, upon arriving at the limits of such land, disappear and do not flow in vacant land. A right of pre-emption attaches to such land.
- 1240. Mud brought down by a river and deposited upon a person's land becomes such person's property owned in absolute ownership, and no other person may interfere therewith.
- 1241. Grasses which grow wild in places having no owner are free. So also are grasses which grow in any person's property owned in absolute ownership, without being planted. But if such person is the indirect cause of their growing, as when he waters the land or digs a creek round it, thereby preparing it and making it fit for vegetation to grow in, the vegetation produced becomes his property and no other person has any right thereto. If any other person takes them and consumes the same, he must make good the loss.
- 1242. Grasses consist of vegetation which has no truck, and consequently does not include trees. Mushrooms are considered to be grasses.
- 1243. Trees which grow wild on mountains which are not yet passed into the possession of anyone, are also free.
- 1244. Trees which grow wild in property owned by anyone in absolute ownership belong to such person. No person may cut them down for firewood without the owners permission. If he does so, he must make good the loss.
- 1245.If any person grafts a tree, the shoots coming from the graft are his property held in absolute ownership, including the fruit thereof.
- 1246. All produce arising from seeds sown by any person for himself is such person's property, and no one may interfere therewith.
- 1247. Game is free.

SECTION II. ACQUISITION OF OWNERSHIP OF THINGS WHICH ARE FREE.

- 1248. There are three means of acquiring absolute ownership. The first consists of the transfer of property held in absolute ownership from one owner to another, such as sale or gift. The second consists of one person succeeding another, such as inheritance. The third consists of obtaining a thing which is free and which has no owner. The latter is either actual, as where someone in fact appropriates such thing, or constructive, as where someone puts out a receptacle to collect rain water, or sets a trap to catch game.
- 1249. Any person who obtains possession of a thing which is free, becomes the independent owner thereof.

  Example:- A, by means of a receptacle such as a jug or a can obtains water from a river and stores it therein. The water becomes the property of A. No other person may make use of it without A's permission. If any other person takes and consumes it without A's permission, he must make good the loss.
- 1250. Taking possession must be coupled with intention. Consequently, if any person puts out a receptacle with the object of catching rain water, the rain water caught in the receptacle becomes that person's property. Again, water is collected in a receptacle not intentionally put in any particular place, does not become the property of the owner

thereof. Any other person may take it and consume it. (See Article 2).

- 1251. In taking possession of water, the flow thereof must be interrupted. Consequently, possession cannot be taken of water from a well which oozes out from the sides thereof and if a person takes and uses the water, he is not liable to make good the loss thereof, even though the owner has not made a free gift thereof for consumption. Similarly, possession cannot be taken of water the flow of which is regulated, that is to say, water which leaves one side of a tank in the same quantity as it enters the other side.
- 1252. Possession may be taken of wild grasses by collecting them and by cutting them and making them into bunches.
- 1253. Trees growing in a state of nature of mountains which are property of no one, may be cut down for firewood by any person whatsoever. And by merely cutting them down such person becomes the owner thereof. There is no need to tie them into bunches.

SECTION III. GENERAL CONDITIONS ATTACHING TO THINGS THAT ARE FREE.

- 1254. Any person may make use of any thing that is free provided that is doing so no injury is inflicted upon any other person.
- 1255. No person may prevent any other person from taking and obtaining possession of anything that is free.
- 1256. Any person may pasture his beasts on wild grasses growing in places that have no owner. He may take and obtain possession of as much thereof as he pleases.
- 1257. Although wild grasses growing on the property of a person owned is absolute ownership, and on which such person is not the indirect cause, are free, the owner, nevertheless, may prevent any other person from entering on his property.
- 1258. If any person gathers wood from mountains which are free, and leaves such wood there and some other person takes it, the former may demand the return thereof.
- 1259. The fruit of trees having no owner and which are found in mountains that are free, and in valleys and pasture lands having no owner, may be gathered by any person whatsoever.
- 1260. If any person hires any other person to gather wood or to catch game for him from uncultivated country, the wood gathered or game caught by such person belongs to the person employing him.
- 1261. If a person lights a fire in his own property owned in absolute ownership, he may prevent any person from entering thereon and taking advantage thereof. But if any person lights a fire in a desert place belonging to no one, other persons may take advantage thereof. They may warm themselves by it. may sew by the light thereof, and may light their lamps therefrom. The owner of the fire may not prevent them from so doing. No one, however, may take a live coal from the fire without the owner's permission.

SECTION IV. RIGHTS OF TAKING WATER AND RIGHT OF DRINKING WATER.

- 1262. By watering is meant taking one's turn in making use of water to water crops and animals.
- 1263. The right of drinking consists of the right of drinking water.
- 1264. Any person may make use of air and light and of seas and big lakes.
- 1265. Any person may water his lands from rivers which are not owned in absolute ownership by any particular person, and, in order to irrigate them and to construct mills, may open a canal or water channels, provided that he does not thereby inflict injury on any other person. Consequently, if the water overflows and causes injury to the public, or the water of the river is entirely cut off, or boats cannot be navigated, such injury must be stopped.
- 1266. All persons and animals have a right of drinking from water, possession of which has not been taken by any other person.
- 1267. The right of taking water from rivers which are privately owned, that is to say, the course of which are privately owned, belongs to the owners thereof. Other persons have a right of drinking therefrom. Consequently, no person may, without permission, water his land from a river which is appropriated to a group of persons, or from a water course, or a water pipe, or a well, He may, however, drink water therefrom, since he has a right of drinking water. He may also water his animals, by reason of the large number thereof, from such river, water-course, or water-pipe, provided there is no danger of destroying the same. He may also bring the water to his house or to his garden by means of jugs or buckets.
- 1268. Any person having in his property which he owns in absolute ownership a tank, a well, or a river, from which water alternatively enters and leaves, may prevent any person who wishes to drink water from entering his property. If however, there is no free water to be had in the neighbourhood, the owner of the property is obliged either to draw off water, or to give such person permission to enter his property and take it. If he does not draw off the water, such person has the right of entering and taking it, subject, however, to no injury being caused, that is to say, provided that no injury is done, such as destroying the edge of the tank, or of the well, or of the river.
- 1269. A person who is joint owner of a river may not open up another therefrom, unless he has obtained the permission of the other joint owners. neither may he alter the old established order in which he has his right of taking water. Nor may he divert his share of the water from such river on to other land not enjoying a right of taking water. If the other joint owners agree to such things, either they, or their heirs, may denounce such agreement at any subsequent date.

SECTION V. THE VIVIFICATION OF DEAD LAND.

- 1270. Dead land consists of land which is not the property of anyone in absolute ownership, nor the grazing ground of any town or village, nor a place where wood can be gathered, and which is remote from civilisation. That is to say, a place where the voice of a person who is shouting from the outskirts of a town or village cannot be heard.
- 1271. Land which is near to civilisation is left to the public for grazing grounds, threshing floors, and for cutting wood. such land is called land left to the public.
- 1272. If any person, after obtaining Imperial sanction vivifies and cultivates any place consisting of dead land, such person becomes the absolute owner thereof. If the Sultan of his representative gives permission to any person to vivify land on the terms that he shall merely make use of such land without becoming owner thereof, such person may deal with the land in the way he has been authorised to do, but does not become the absolute owner thereof.
- 1273. If a person vivifies a piece of land and leaves the rest, he becomes the absolute owner of the part he vivifies, but not of the remainder. But if in the middle of the part he has cultivated he leaves a portion vacant, such portion becomes his.
- 1274. If a person vivifies a piece of dead land and thereafter some other persons arrive and vivify the land situated on all four sides thereof, a road shall be made in the land of the last comer for the former. That is to say, there shall be a road for him there.
- 1275. Vivification consists of sowing seed, planting trees, ploughing the land, watering it, or opening water-channels or canals, in order to irrigate it.
- 1276. If any person builds walls round dead land, or with a view to protecting it from flooding, makes a dam round it by raising the sides thereof, such land is considered to have been vivified.
- 1277. The placing of stones, or thorns, or the dead branches of trees so that they surround the four sides of land, or clearing away the grasses on such land, or burning the thorns on it, or sinking wells thereon, does not amount to vivification. This is enclosing land.
- 1278. If any person cuts down the grasses of thorns on dead land, puts them round such land and puts earth thereon, but does not complete it in such a way that they form a dam preventing the flow of water, such act does not amount to vivification, but is considered to be enclosing the land.
- 1279. If any person encloses a piece of dead land, he possesses a stronger right to such land than any other person, for a period of three years. If he fails to vivify it during the period of three years, he loses such right. It may be given to some other person to vivify.
- 1280. If any person digs a well in dead land with Imperial permission, such person becomes the absolute owner of such well.

SECTION VI. OWNERSHIP OF LAND SURROUNDING WELLS SUNK, WATER BROUGHT, AND TREES PLANTED WITH IMPERIAL PERMISSION IN DEAD LAND.

- 1281. The land attaching to the ownership in a well amounts to forty ARSHINS.

- 1282. The land attaching to springs of water is five hundred ARSHINS from each side.
- 1283. The land attaching to the two sides of a big river which does not require continually to be cleaned amounts to one half the breadth of the river. The amount of land attaching to both sides of the river is equal to the breadth of the whole river.
- 1284. The land attaching to small rivers which continually require to be cleaned, that is to say water courses, canals and underground channels,consists of an amount large enough for the stones and mud to be thrown upon when being cleaned.
- 1285. The land attaching to water in channels running along the surface of the ground amounts to five hundred ARSHINS, as in the case of springs.
- 1286. The land attaching to wells is the absolute property of the owner of the wells. No other; person may deal therewith in any way whatsoever. If any other person sinks a well in such person's land, he can cause it to be closed. The same rule applies to land attaching to springs, rivers and water channels.
- 1287. If any person, with Imperial sanction, digs a well in the vicinity of land attaching thereto on the other side amounts to forty ARSHINS. He may not, however, trespass upon the land attaching to the first well.
- 1288. If any person digs a well outside the land attaching to some other well, and the water from the first well flows into the second well, no liability is incurred. Similarly, if a person opens a shop next door to the shop of some other person and the business of the latter declines, the former cannot be obliged to shut his shop.
- 1289. The land attaching of trees planted in dead land with Imperial sanction is five ARSHINS on each side. No other person may plant trees within this distance.
- 1290. The banks of a water channel, the water of which flows into the land of some other person, belong to the owner of such channel, on each side, to the amount necessary to hold the water. If the banks are raised on both sides, the raised land also belongs to the owner of the channel. If banks are not raised, and there is no evidence to prove that either the owner of the land or of the water channel has taken possession thereof, as by planting trees therein, the banks belong to the owners of the land. The owner of the channel, however, has the right, when cleaning his channel, of throwing mud therefrom on both sides.
- 1291. No land attaches to a well dug by a person in his own land owned in absolute ownership. His neighbour may dig a well next to it in his own land owned in absolute ownership and the former may not seek to prevent the latter from doing so by alleging that he is attracting water away from his well.

SECTION VII. FUNDAMENTAL CONDITIONS AFFECTING HUNTING.

- 1292. Game may be hunted with implements which inflict wounds, such as a lance or a gun, or with things such as a net or a trap, or with savage animals, such as a trained dog, or with birds of prey, such as a trained hawk.
- 1293. Game consists of wild animals which are afraid of man.
- 1294. Domestic animals may not be hunted, nor wild animals which have been tamed. Consequently, if any person catches a pigeon or a hawk with a ring on its leg, or a stag with a collar on its neck, from which it may be inferred that they are not wild, they are considered to be lost property, and the person who has taken them must make known that he will restore them to their owners upon application made by them.
- 1295. Game must be in a position to flee from mankind. That is to say, must be able to get away and escape by means of its legs or its wings. If it is unable to escape and flee, for example, where a stag falls into a well, it loses its quality of game.
- 1296. Any person who deprives game of its quality of game is considered to have caught it.
- 1297. Game belongs to any person who catches it.

  Example:- A shoots at game and wounds it so that it cannot escape. The game becomes the property of A. But if A wounds it slightly so that it can escape, he does not become the owner thereof and if any other person hits or catches it in any other way, the latter becomes the owner thereof.
- 1298. If two persons shoot at game and both hit it, the game in question is divided in equal shares between the two.
- 1299. If two persons each let trained dogs chase after game and both catch an animal, such animal similarly becomes the joint property of the owners of the dogs.

  If each of them catch an animal, their masters become owners of such animal.

  Again, if two persons each let trained dogs chase after game and one of them brings down the animal and the other kills it, the master of the first dog becomes owner of the animal, if the dog has so treated it that it could not get away and escape.
- 1300. If any person catches fish found in a water channel or canal belonging to some other person, which cannot be caught without fishing for them, such person becomes the owner thereof.
- 1301. If any person prepares a place for fishing by the water side, and a large number of fish come there, and on account of the water decreasing the fish can be taken without the need of fishing for them, such fish belong to that person. But if by reason of the large quantity of water in that place it is necessary to catch the fish,such fish do no become the property of that person, but, if fished for and caught by some other person, become the property of the latter.
- 1302. If game enters the house of any person, and such person closes the door and catches the game, the game becomes his property.

  If he closes the door, however, But fails to obtain possession of the game, he does not become owner thereof, and if any other person catches it, such person becomes owner thereof.
- 1303. If any person put down anything such as a net or a trap in a particular place in order to trap game, and catches such game therewith, such person becomes the owner thereof. But if any person puts out a net in a particular place to dry and game is caught therewith, such game does not become his property. Again, if game falls into a hole in land belonging to a particular person, any other person may take it and thereby become the owner thereof. But if the owner of the land dug the hole for the purpose of catching game, he has a prior right over any other person to such game. (See Article 1250).
- 1304. If a wild bird builds its nest in any person's garden and lays eggs therein, it does not become the property of such person. Any other person may take its eggs, or its young, and the owner of the garden may not demand their return. But if such person has prepared his garden so that a wild bird may lay its eggs, and bring forth its young there, such person may take the eggs and the young of such bird and becomes the owner thereof.
- 1305. If bees select a place in any person,s garden and make a hive there, the honey is considered to be one of the perquisites of the garden and becomes the property of such person, and no other person may interfere therewith, A tithe, however, must be paid to the treasury.
- 1306. Bees which gather in a hive belonging to any particular person are considered to be property of which he has obtained possession. The honey produced by them also becomes the property of that parson.
- 1307. If a swarm of bees leave the hive of one particular person and settle in the house of another and such person appropriates them, the owner can demand the return thereof.

CHAPTER V. JOINT EXPENSES.

SECTION I. REPAIRS TO JOINTLY OWNED PROPERTY AND EXPENSES CONNECTED THEREWITH.

- 1308. If property jointly owned in absolute ownership is in need of repairs, the joint owners must jointly repair such property in proportion to their shares.
- 1309. If one of the joint owners spends a reasonable sum of his own money with the permission of the other of the repair of the jointly owned property, he may have recourse against the other joint owner for his share. That is to say, he may recover from the joint owner whatever part of the expenditure falls to his share.
- 1310. If one of the owners of the property jointly held in absolute ownership which requires repairs is absent, the other may apply to the Court for permission to effect such repairs. Permission given by the Court is equivalent to permission given by the absent joint owner. That is to say, upon the joint owner who is present carrying out the repairs of the jointly owned property by order of the Court, he is considered to have obtained the permission of the absent joint owner and has a right of recourse against him for his share of the expenses.

- 1311. If any person carries out repairs to property jointly owned in absolute ownership on his own initiative without obtaining the permission of the other joint owner, or of the Court, he is considered to have carried out such repairs free of charge. That is to say, he has no right to claim an amount corresponding to the share of the other joint owner, whether such jointly owned property is capable of partition or not.

- 1312. If any person wishes to carry out repairs to property jointly owned in absolute ownership which is capable of partition, and the other joint owner objects thereto, such person is considered to have carried out the repairs free of charge. That is to say, he cannot have recourse against the other joint owner for his share. If upon the refusal of the joint owner in this manner, such person applies to the Court, no order can be made for repairs, in view of the terms of Article 25. An order may, however, be given for partition. After partition has been effected, such person may do what likes with his share.

- 1313. If property jointly owned in absolute ownership such as a hill or a bath, which is not capable of partition, is in need of repairs and one of the joint owners wishes to carry out such repairs and the other refuses to agree, the former, after obtaining an order from the Court, may expend a reasonable amount of money on such repairs. He becomes a creditor of the other joint owner for a portion of the expenses occasioned by the repairs corresponding to his share. He may obtain payment of the sum owing to him by letting the jointly owned property on hire and taking the rent. If he carries out the repairs without obtaining an order from the Court, he can only obtain payment of a sum, as laid down, corresponding to the value of the building at the time the repairs were carried out, notwithstanding what he may actually have paid.

- 1314. If things jointly owned in absolute ownership which are not capable of partition, such as mill and a bath, are totally destroyed, so that only the land upon which they were erected remains, and one of the owners wishes to erect a building thereon and other refuses to agree, the latter cannot be obliged to build, but the land shall be divided.

- 1315. If a building owned in absolute ownership is destroyed or burnt, the upper storey belonging to one person and the lower storey to another. either of them may restore his portion of such building to its original state. neither can prevent the other from so doing. If the owner of the upper storey requests the owner of the lower storey to repair his part so that he may build his portion thereon, and the owner of the lower storey refuses, the owner of the upper storey may apply to the court for an order empowering him to reconstruct both lower and upper storeys and upon doing so, he may prevent the owner of the lower storey from dealing therewith until he has paid his share of the expenses.

- 1316.If a wall jointly owned by two neighbours is destroyed and things are resting upon it, such as a kiosk or the ends of beams belonging to the two, and one of them rebuilds the wall and the other refuses to do so, the one who rebuilds can prevent the other from placing anything on such wall until he has paid his half of the expenses.

- 1317. If a wall separating two houses is destroyed, and the women's quarters of one of them can be overlooked from the other, and the owner of one of the houses wishes the wall to be rebuilt jointly and the owner of the other refuses, he may not be forced to do so. The Court, however, may order them to build jointly a screen made of wood or some other material.

- 1318. If a wall jointly owned by two neighbours becomes weak and it is feared that it will collapse, and one of them wishes to knock it down and the other refuses to agree thereto, he shall be obliged to knock down such wall together with the other joint owner.

- 1319. If real property jointly owned by two minors, or which is situated between two properties which have been dedicated to pious purposes, is in need of repair, and injury will result thereto if it is left in its present state, and injury will result thereto if it is left in its present state, and one of the two guardians, or one of the two administrators of the pious foundations wishes to carry out the repairs and the other does not, the latter shall be obliged to do so.

  Examples:-

  (1). A jointly owned wall separates the houses of two minors and it is feared that it will collapse. one of the guardians wishes to repair the wall and the other refuses. The court will then send a reliable person to investigate the matter. If as a result it proves that injury will result to the minor if the wall is left in its present state, the guardian who refuses shall be forced to repair such wall jointly with the other guardian from the property of the minor.

  (2). A house which is the joint property of two pious foundations is in need of repairs. One of the administrators wishes to carry out the repairs and the other does not. The latter will be forced to do so be the Court from the property of the pious foundation.

- 1320. If two persons are joint owners of an animal, and one of them refuses to feed him and the other applies to the Court, the Court shall order the joint owner who refuses to feed him either to sell his share, or feed the animal jointly with the other owner.

SECTION II. THE CLEANING AND IMPROVEMENT OF RIVERS AND WATER COURSES.

- 1321. The cleaning and improvement of rivers which do not belong to any particular person in absolute ownership in incumbent upon the Treasury. If it is not in the power of Treasury to do so, the public may be forced to do so.

- 1322. The cleaning of rivers jointly owned in absolute ownership is incumbent upon the owners thereof, that is to say, upon those who have the right of taking water therefrom. The owners of a right of drinking water may not be called upon to share in the expenses of cleaning and improvement.

- 1323. If some of the owners of a right of taking water from a jointly owned river desire to clean such river and the others refuse to do so, the persons who refuse will be made to clean such river jointly with the others, if it is a public river. If it is a private river, those persons who wish to clean it may, by order of the Court, proceed to do so, and may prevent those who refuse from making use of the river until such time as they have paid the amount which falls to their share of the expenses.

- 1324. Should all the owners of a right of taking water refuse to clean a river which is jointly owned, they may be forced to do so, if it is a public river, but not if it is a private river.

- 1325. If any person owns land on the banks of a public river, whether such river is absolute ownership or not, and there is no other road for satisfying such needs as drinking water or improving the river, the public may pass over such land the owner cannot prevent them from so doing.

- 1326. Expenses connected with the cleaning and improvement of a jointly owned river begin from above. First of all, the whole of the joint owners must share therein, beginning with the joint owner whose land comes last, the reason being that disadvantage is an obligation accompanying enjoyment.

  Example:- A river jointly owned by ten persons is being cleaned. The expenses connected with the joint owner's land which is highest up must be borne by the whole of the joint owners and thereafter by the nine others. The same procedure is then followed in the case of the land of the second joint owner, the expenses being divided among the eight others. This procedure is then followed in the case of the land of the second joint owner, the expenses being divided among the eight others. This procedure is then continued until the joint owner's land which is lowest down is reached, who shares in the expenses of all. The last joint owner does his share alone. In this way, the expenses of the joint owner who is highest up are the least of all, and the expenses of the joint owner who is lowest down are the greatest of all.

- 1327. The expenses occasioned by the cleaning of a jointly owned sewer begin from below. Thus, all the joint owners contribute towards the payment of the expenses of the portion of the sewer which is situated on the land of the joint owner who is lowest. On proceeding higher up, the latter has no further expenses to pay, and so on until they have all paid their shares, the joint owner who is highest up paying the expenses connected with his share alone. In this way, the expenses of the joint owner who is lowest down are lower than those of any other, and the expenses of the joint owner who is highest up greater than those of the rest.

- 1328. The repair of a private road, like a sewer, begins from below. The entrance is considered to be the lowest part, and the termination the highest part. A joint owner who is at the entrance shares in the expenses of repairing connected with his share alone. The joint owner who is at the termination of the private road, besides sharing in the expenses attaching to the shares of all the joint owners, pays his own share alone.

CHAPTER VI. PARTNERSHIP.

SECTION I. DEFINITION AND CLASSIFICATION OF PARTNERSHIP.

- 1329. A contract of partnership consists of a contract for joint ownership whereby two or more persons jointly share in capitol and profit.

- 1330. The basis of a contract of partnership consists of offer and acceptance, express and implied.

  Examples:-

  (1). A informs B that he has become his partner whereby they will carry on business with a certain amount of capital. B agrees. An express partnership has been formed by offer and acceptance.

  (2). A gives a thousand piastres to B, requesting B to give a thousand piastres also and buy certain property. B does so. A partnership has been formed by his implied acceptance.

- 1331. Contractual partnership is divided into two categories:

(1). Partnership with equal shares. A partnership with equal shares is a partnership which is formed when the partners enter into a contract of partnership stipulating for complete equality between them, and, after they have contributed the property which is to form the capital of the partnership, they maintain equality in the amount of their capital, and their shares of the profit. Similarly, if a person dies, and his sons take over the whole of his property left to them and make it their capital on the terms that they may buy and sell property of all kinds and share the profit equally between them, they may thereby form a partnership with equal shares. Formation of a partnership of this type, where there is complete equality, however, is rare.

(2). Partnership with unequal shares. A partnership with unequal shares is formed when a contractual partnership is concluded without stipulating for complete equality.

- 1332. A partnership, whether one of equal or of unequal shares, is either a partnership in property, or a partnership in work or a partnership on credit. Thus if the partners contribute a quantity of property to be the capital either jointly, or separately, or absolutely, and from a partnership with a view to trading and sharing the profits between them, such partnership is a partnership in property. If they agree that their labour shall be their capital and that they shall undertake to do work for some other person, and that the remuneration they receive shall be divided between them and form a partnership to that effect, such partnership is a partnership of work. A partnership of this nature is also called a personal partnership, or an artisans partnership, or a partnership of wage-earners, as, for example, where one tailor goes into partnership with another tailor, or a tailor goes into partnership with the dyer. If a partnership is concluded in which there is no capital and the partners buy and sell on credit on the terms that they shall divide the profits, such partnership is a partnership on credit.

SECTION II. GENERAL CONDITIONS AFFECTING A CONTRACTUAL PARTNERSHIP.

- 1333. Every contractual partnership includes a contract of agency. Thus, each of the partners is the agent of the other to deal with property, that is to say, to buy or sell, or to work for a wage for some other person. Consequently, in all partnership there is a condition that the partners shall be of sound mind and perfect understanding, as in the case of agency.
- 1334. A partnership with equal shares also includes a contract of guarantee. Consequently, the partners must be competent to conclude a contract of guarantee.
- 1335. A partnership with unequal shares includes a contract of agency only and does not include a contract of guarantee. Consequently, if at the time of the conclusion of the contract there has been no mention of a guarantee, the partners are not guarantors of each other. Consequently, a minor who has received authority may also enter into a partnership with unequal shares. But if at the time of the conclusion of a partnership with unequal shares, the contract of guarantee has been mentioned, the partners are guarantors of each other.
- 1336. It must be stated in what way the profit is to be divided among the partners. If this is vague or unknown, the partnership is voidable.
- 1337. The shares of the profit to be divided between the partners must consist of undivided parts such as a half, a third, or a quarter. If a contract is made whereby one of the partners is to receive a fixed amount of the profit, the partnership is null and void.

SECTION III. CONDITIONS AFFECTING A PARTNERSHIP IN PROPERTY.

- 1338. The capital must be some kind of cash.
- 1339. Copper coins which are in current use are considered by custom to be cash.
- 1340. If it is customary among people to transact business with gold and silver which has not been coined, such gold and silver is considered to be cash. If not, it is considered to be merchandise.
- 1341.The capital must consist of some specific object. a debt, that is to say, a sum due to be received from anyone, cannot be the capital of a partnership.

  • Example:- Two persons cannot form partnership with capital consisting of something due from some other person. If the capital of one consists of some specific property and of the other of a debt, the partnership is invalid.
- 1342. A partnership may not be validly concluded with regard to property which is not considered to be cash, such as merchandise or real property. That is to say, it cannot be the capital of the partnership. Nevertheless, if two persons desire to make the capital of the partnership out of property which is not in the nature of cash, each of them may sell the half of his property to the other, and after they have become joint owners thereof, they may conclude a partnership in respect to the jointly owned property. Similarly, if two persons mix together property of theirs the like of which can be found in the market, as, for example, a quantity of wheat, they then become joint owners of property owned in absolute ownership, and they can conclude a partnership with the mixed property as their capital.
- 1343. A partnership formed whereby one person provides a horse and the other the harness on the terms that the money obtained by letting the horse on hire is to be shared between them is voidable, and the money obtained belongs to the owner of the horse; and since the harness is a necessary of the horse, the owner thereof is not entitled to a share of the money received but may only claim an estimated sum for the harness.
- 1344. If two persons enter into partnership whereby one who is the owner of an animal loads the goods of the other on to such animal, such partnership is voidable, and the profit earned belongs to the owner of the goods. The owner of the animal is entitled to an estimated payment. If two persons enter into partnership whereby one of them sells his goods in the shop of the other on the terms that the profit shall be shared between them, the partnership is voidable and the profit derived from the good belong to the owner. The owner of the shop is entitled to receive as estimated rent for the shop.

SECTION IV. RULES RELATING TO A CONTRACTUAL PARTNERSHIP.

- 1345. Work becomes possessed of specific value when the value thereof is estimated. That is to say, labour is valued when the worth thereof is assessed. The work of one person may be proportionately more valuable than the work of some other person.

  Example:- Two persons are partners in a partnership of unequal shares. Their capital is subscribed in equal shares and it is stipulated that both of them shall work in the business. It may validly be agreed that one of them shall have a greater share of the profits than the other since the skill of one in trading may be greater and his output of work larger and more valuable.
- 1346. A liability for work is in the nature of work. Consequently, a contract of partnership in work may validly be made whereby a person puts an artisan in his shop and has the work which he has undertaken to do performed by him on the terms that they are to divide the profit equally between them. The right of the owner of the shop to a half share accrues merely by reason of having guaranteed and undertaken the work, and this includes his right to make use of the shop.
- 1347. The right to profit may arise out of property, or work, or, as is shown in Article 85, by liability in respect thereto. Thus, in a case where one supplies the capital and the other the labour, profit is earned by property being supplied by the owner thereof and the labour furnished by the person who undertakes to work. An artisan may also engage an apprentice and validly cause such apprentice to perform work which he has undertaken to do for half the normal wages. The apprentice is entitled to half the wage received from the employers by reason of the work he has performed, and his master is entitled to the other half, since he is liable for the work being properly performed.
- 1348. If none of the three elements mentioned above, that is to say, property, work, and liability are present, there is no right to profit.

  Example:- A asks B to trade with his property and share the profit with him. No partnership is formed, and A cannot thereby take a share of the profit.
- 1349. The right to profit is entirely limited by the terms of the contract of partnership. It is not in proportion to the business done. Consequently, even though the partner who is bound to do certain work fails to do so, he is presumed to have done such work.

  Example:- It is stipulated in a valid partnership that the two partners shall both perform certain work and one of them does so and the other with some excuse, or with out any excuse, fails to do so, the latter, by reason of his being the agent of the former, is considered to have performed the work, and the profit is divided between them in the manner agreed upon.
- 1350. Partners are trustees the one for the other, and the property of the partnership in the possession of either is considered to be property entrusted for safe keeping. If the property of the partnership is destroyed while in the possession of one of them without any fault or negligence on his part, he is not liable to make good the loss to the share of his partner.
- 1351. In a case of partnership in property, the capital may be subscribed in equal or unequal shares by the partners. But if in a case where one supplies the capital and the other the labour, it is agreed that the profit shall be shared jointly between them, the partnership is one where one partner subscribes the capital and the other furnishes the labour. This type of partnership will be dealt with in the relevant Chapter. Should the profit go entirely to the workman, it is a loan; and if it is stipulated that the profit shall go entirely to the owner of the capital, such capital, while in the possession of the workman, is called invested capital and the workman is called a person employing capital. If he is such, he is considered to be an agent working for nothing, and profit and loss fall upon the owner of the property.

- 1352. The death of one of the partners, or his affliction by permanent madness, causes the dissolution of the partnership.

  But if there are three or more partners, the dissolution of the partnership only affects the one who dies or goes mad and the partnership subsists as regards the others.

- 1353. The partnership may also be dissolved by one of the partners, provided the others are informed thereof. Cancellation by one without the knowledge of the others does not bring about the dissolution of the partnership.

- 1354. If the partners dissolve the partnership on the terms that the cash in hand is to go to one of them and debts due to the other, the division is invalid;and any sums received in this way from cash in hand by one of them is jointly owned with the other. Debts due are jointly owned in the same way. (See Article 1123).

- 1355. If one of the partners receives a quantity of the partnership property and dies while dealing with it in a manner unknown to the other partner, the share of the latter shall be paid out of the estate of the deceased.(See Article 801).

SECTION V. PARTNERSHIP WITH EQUAL SHARES.

- 1356. As is stated in Section II, partners with equal shares are guarantors the one of the other. Consequently, an admission with regard to the other. If one of them makes an admission with regard to a debt, the person in whose favour the admission is made may demand payment from whichever of the partners he wishes. Any loan contracted, of any nature whatsoever, by one of the partners on account of the business transactions of the partnership, such as sale, purchase, or hire, is binding on the other also. Anything sold by one of them containing a defect may be returned to the other, and anything bought by one of them may be returned by the other on account of defect.

- 1357. Any food, clothing and other necessaries bought by one of the partners with equal shares for himself and his family are his property and his partner has no right therein. The vendor, however, may claim the price thereof from the other partner by virtue of the guarantee also.

- 1358. In partnership in property with equal shares, the shares of the partners must be equal in respect to capital and to profit. Neither of the partners may introduce any property by way of capital, that is to say, cash or property in the nature of cash, in excess of the capital of the partnership. The quality of shares, however, is not affected if one of the partners introduces property which cannot become capital of the partnership in excess of the partnership capital, that is to say, merchandise, or real property, or debts due from some other person.

- 1359. If it is agreed in a partnership for work that each of the partners may undertake work of any nature whatsoever, and that they are liable for the work equally, and that they shall be equal as regards profit and loss, and that the one is the guarantor of the other for anything which may happen to the partnership, such partnership is a partnership with equal shares. Consequently, the wages of an employee and the hire of a shop may be claimed from any one of them, and if any person claims goods from them and one of them admits the claim, the admission is binding even though the other; denies such claim.

- 1360. If two persons conclude a partnership whereby they agree to buy and sell property on credit and that the property purchased and the price received and the profit shall be jointly owned by them in equal shares and that each one shall be guarantor of the other, a partnership on-credit is formed with equal shares.

- 1361. Upon the formation of a partnership with equal shares, either the actual word denoting equal shares must be used on the whole of the terms of such partnership must be enumerated. If a contract for partnership is made in general terms, such partnership is one with unequal shares.

- 1362. If one of the conditions as mentioned above in this Section is absent, a partnership with equal shares is changed into a partnership with unequal shares.

  Example:- In the case of a partnership in property with equal shares, one of the partnership in property with equal shares, one of the partners acquires possession of property by way of inheritance or gift. If such property is capable of being used as the capital of the partnership, such as cash, the partnership is changed into a partnership with unequal shares. If it is property, however, which cannot become the capital of the partnership, such as merchandise or real property, no injury is caused to the partnership with equal shares.

- 1363. Any condition essential to the validity of a partnership with unequal shares is also essential to the validity of a partnership with equal shares.

- 1364. Any act performed by partners in a partnership with unequal shares may also be performed by partners in a partnership with equal shares.

SECTION VI. PARTNERSHIP WITH UNEQUAL SHARES

SUB-SECTION I. PARTNERSHIP IN PROPERTY.

- 1365. It is not essential to the validity of a partnership with unequal shares that the partners should subscribe the capital in equal shares.

  The capital of one may be greater than the capital of another. None of them is obliged to subscribe the whole of his money to the capital fund, but may form a partnership with regard to the whole of their property or a portion thereof. For this reason, they may have property as for example money, apart from the capital of the partnership, and which may become capital of the partnership.

- 1366. A contract of partnership may be entered into both with regard to commerce in general, and any particular branch of commerce, as, for example, the provision trade.

- 1367. Any condition which has been laid down with regard to the division of profit in a valid partnership must be observed.

- 1368. In a voidable partnership, the profit must be divided in accordance with the amount of the shares of capital. If a stipulation has been made that more shall go to one than the other, no effect shall be given thereto.

- 1369. Any damage suffered without any fault or negligence shall in any case be divided in proportion to the amount of the shares of capital. If any stipulation has been made to the contrary, no effect shall be given thereto.

- 1370. If the partners agree that the profit shall be divided among them in proportion to the amount of their shares of capital, such agreement is valid, whether the capital has been subscribed in equal or unequal shares, and the profit shall be divided between them in the manner agreed upon, in accordance with the amount of their shares of capital, and that, whether it has been agreed that both of them or only one of them shall work therein. If it is stipulated, however, that only one of them shall work therein, the capital of the other; is considered to be invested capital in such person's possession.

- 1371. If the capital subscribed by the partners is equal and it is stipulated that a larger share of the profit, for example, two thirds, shall go to one than to the other, and it is also stipulated that both shall work therein, both the partnership and the stipulation is valid.(See Article 1345). If it is stipulated that only one of them shall work therein, and it has been agreed that the work shall be performed by the partner whose share of the profits is greater, the partnership is valid and the effect shall be given to the condition, the partner being entitled to a share of the profits arising out of the capital by reason of the amount he has subscribed to the business, and also to an additional amount on account of his work. The partnership, however, resembles a partnership where capital is furnished by one and labour by another, since the capital of the other partner in such person's possession is in the nature of capital subscribed to such a partnership. If it is stipulated that the work shall be performed by the partner whose share in the profits is smaller, such stipulation is invalid, and the profit shall be divided between them in proportion to the amount of capital, the reason being that if the profit is divided as agreed, the additional amount to be received by the partner who performs no work is not sufficient to compensate for property, work and liability. If thee is a right to profit it is only in respect to one of these three things. (See Articles 1347 and 1348.)

- 1372. If the shares of the partners are unequal, for example, if the capital of one amounts to one hundred thousand piastres and of the other to one hundred and fifty thousand piastres, and it has been agreed that the profits shall be divided among them in equal shares, such agreement resembles the case of a partnership where the shares of the partners are equal, a stipulation having been made for greater share of the profits too be given to one of them, the reason being that it has been agreed that the partner with the lesser capital shall have a share of capital. Consequently, if it has been stipulated that both the partners whose share of profits is greater, that is to say, whose capital is greater, shall do the work, the partnership is valid and effect shall be given to the condition. If it has been stipulated that only the partner whose share of profits is smaller, that is to say, whose capital is greater, shall perform the work, such stipulation is invalid, and the profit shall be divided among them in proportion to the amount of their shares of the capital.

- 1373. Each of the partners may sell the partnership property for ready money or on credit, for any price he thinks fit.

- 1374. Property may be bought for the partnership either with ready money or on credit by whomsoever of the partners is in possession of the capital of the partnership. But if he buys the property as the result of flagrant misrepresentation, such property becomes his own and is not the property of the partnership.

- 1375. No partner who is not in possession of the capital of the partnership may buy property for the partnership. If he does so, such property becomes his own.

- 1376. If one of the partners buys anything which is not of the type used in their branch of commerce with his own money, such property is his own and his partner cannot claim a share therein. But if one of he partners while in possession of the capital of the partnership buys property of the type used in their branch of commerce with his own

money it becomes the property of the partnership.

Example:- One of two persons who have entered into a partnership to carry on the business of cloth merchants buys a horse with his own money. The horse becomes his own property, and his partner cannot claim a share in such horse. But if he buys cloth, it becomes the property of the partnership, and he has no right of maintaining that he has bought the cloth for himself and that his partner has no share therein. He owns the cloth jointly with his partner.

- 1377. Contractual rights belong to the contracting party only. Consequently, if one of the partners takes delivery of property he has purchased and pays the price thereof, the transaction is binding on him alone. Thus, any claim made by any person as to the price of the property purchased may be made against such partner only, and may not be claimed from the other partner. Again, if one of the partners sells property, he alone is entitled to receive the price thereof. Thus, if the purchaser gives the price to the other partner, he is only liberated in respect to the share of the partner who has received the price, but is not released in respect to the share of the partner with whom he contracted. Moreover, if the partner who has concluded the contract appoints some other person to be his agent to receive the price of the property sold, such person's partner cannot dismiss the agent. But the partner may remove an agent appointed by the other in respect to contracts of sale, purchase and hire.

- 1378. The right of rejection on account of defect being a contractual right, one of the partners may not reject property purchased by one of the other partners on account of defect. Property sold by one may not be returned to another on account of defect.

- 1379. Each of the partners may deposit the partnership property son safe keeping, may give it to some other person on condition that he obtains the whole of the profit, may place it in a business where one person supplies the capital and the other the labour, and may conclude contracts of hire, for example, he may take a shop on hire and pay wages to persons for the preservation of the partnership property. he may not, however, mix the partnership property with his own property or enter into a partnership with some other person without the consent of the other partner. If he does so and the partnership property is lost, he must make good the loss suffered by his partner.

- 1380. No partner may lend the partnership property to any other person without the permission of the other. He may, however, obtain property on loan on behalf of the partnership. Any sum of money borrowed by one partner is a debt for which the other is jointly liable.

- 1381. If one of the partners leaves for some other country on behalf of the business of the partnership, the expenses are a charge of the partnership property.

- 1382. If each of the partners authorises the other to act in accordance with his own judgement or to do as he likes, each of them may perform the work falling to his branch of commerce. Thus, each of them may pledge the partnership property, or take a pledge in respect thereto, or proceed to some other country with the partnership property, or mix it with his own property, or conclude a partnership with some other person. He may not, however, destroy the partnership property of confer the absolute ownership therein upon some other person without consideration, unless he obtains the express permission of his partner.

  Example:- One partner men not lend or make a gift of the partnership property to any other person without the express permission of the other partner.

- 1383. If one of the partners forbids the other to proceed to some other country with the partnership property, or to sell on credit, and the latter nevertheless does so, he is bound to make good any loss occasioned thereby.

- 1384. Any admission of debt made by one of the partners in respect to the operations of a partnership with unequal shares does not bind the other. Thus, if he admits that the debt has arisen solely in connection with his own contracts and transactions, he himself is responsible for the whole of the debt. If he admits that the debt has arisen in connection with a transaction carried out in conjunction with his partner, he must pay half thereof. If he admits that the debt has been incurred solely on account of some transaction carried out by his partner, he is not obliged to pay anything.

SUB-SECTION II. PARTNERSHIP FOR WORK.

- 1385. A partnership for work consists of the conclusion of a partnership with a view to undertaking work. Thus, the partners enter into a partnership whereby they undertake and hold themselves ready to perform any work which they may be commissioned to perform by those who employ them. and that whether they are liable equally for the performance of the work or not. That is to say, whether they have concluded a partnership whereby they undertake to be responsible equally for the performance of the work, or whether, for example, one of them undertakes to be responsible for one third and the other for two thirds.

- 1386. Each of the partners may enter and perform work. One of them may obtain work and the other may perform it. One of the tailors who are partners in a partnership of skilled workmen may accept and cut the material and the other; may sew it.

- 1387. Each partner is the agent of the other for the purpose of undertaking work. Any work so undertaken by one of them must be performed both by him and by his partner. Consequently, the liability for the performance of work in the case of a partnership for work in unequal shares is considered to be that of a partnership in equal shares, since the employer may require the performance of the work by any one of the partners he selects, and each of the partners is obliged to perform such work. No partner may refuse to perform the work by alleging that his partner undertook to do it.

- 1388. A partnership for work in unequal shares is like a partnership in equal shares as regards the right to wages. That is to say, each of the partners may claim the whole of the wages due from the employer and on paying any one of them the employer is discharged from all liability.

- 1389. The partner who actually undertakes to do work is not obliged personally to perform such work. He may perform such work himself if he so desires, or he may cause his partner or some other person to do so. If the employer, however, makes a condition that the partner shall perform the work himself, he must then perform the work personally. (See Article 571.)

- 1390. The earnings of the partners are divided in the manner agreed. That is to say, if it has been agreed that the wages shall be divided in equal shares they shall be so divided. If it has been agreed that the wages shall be divided in equal shares they shall be so divided. If it has been agreed that the wages shall be divided in unequal shares, for example, one third or two thirds, they shall be divided accordingly.

- 1391. It may validly be agreed that work shall be in equal shares, but that the wages shall be unequal.

  Example:- The partners may validly agree that the work shall be performed in equal shares and that the wages shall be divided in the proportion of two thirds and one third, the reason being that one may be more expert in his craft, and his work corresponding it better.

- 1392. The partners are entitled to their wages by reason of their liability to perform the work. Consequently, if one of them performs no work, as, for example, or remains idle, and his partner alone performs such work, the earnings and wages must nevertheless be divided in the manner agreed upon.

- 1393. If one of the partners causes the destruction or damage of property delivered to be worked upon, the other partner is jointly liable with him to make good the loss, and the employer may call upon whichever one he likes to make good the loss to his property, such loss being divided among the partners in accordance with the amount of the loss they have to make good.

- Example:- The partners enter into a partnership whereby they undertake to perform the work in equal shares. They must make good any loss in equal shares. If they enter into a partnership whereby one undertakes to perform one third and the other two thirds, the loss also must be made good in the proportion of two thirds and one third.

- 1394. Porters may validly agree to enter into a partnership whereby they undertake jointly to perform work.

- 1395. Two persons, one of whom owns a shop and the other tools and implements, may validly enter into a partnership whereby they undertake to do work.

- 1396. Tow persons may validly enter into a partnership to do skilled work whereby one supplies the shop and the other the labour. (See Article 1346).

- 1397. Two persons may validly enter into a partnership for work whereby they undertake on equal terms to transport property, one supplying a mule and other a camel. The earnings and wages shall be divided equally between them. The fact that the load of the camel is the greater is of no importance, since in a partnership for work the partners are entitled to their wages by reason of their liability to perform the work. But if no partnership is concluded for undertaking work, but the partners agree to let their mule and camel on hire as such and to divide the earnings between them, the partnership is voidable and the amount of hire paid in respect to the hiring of either the mule or camel belongs to the owner thereof. If one of them helps the other in loading and transport, he is entitled to an estimated wage for his services.

- 1398. Any person who, together with his son living in his household, carries on any skilled work, is entitled to the whole of the earnings. The son is considered to be an assistant. Again, if a person plants a tree and is assisted by his son, the trees belong to such person and the son has no right therein.

SUB-SECTION III. PARTNERSHIP ON CREDIT.

- 1399. It is not essential that the partners should have equal shares in the property purchased.

  Example:- The property purchased may be divided between them in shares of one half, two thirds, and one third.

- 1400. In a partnership on credit, the right to profit arises out of the liability to make good any loss.
- 1401. The liability to make good any loss in respect to the price of the property bought is in proportion to the share of the partners therein.
- 1402.The share of the profit accruing to each of the partners in in proportion to their share of the property purchased.

  If one of the partners makes a stipulation that he shall receive more than his share in the property purchased, such stipulation is void; and the profit shall be divided between them in proportion to their share in the property purchased.

  Example:- An agreement is made that the property purchased shall be divided between them in equal shares. The profit must also be divided between them in equal shares. If they agree to divided the property purchased in the proportion of two thirds and one third, the profit shall also be in the same ratio. But if it is agreed that the property purchased shall be divided in equal shares and that the profits shall be divided in proportions of one third and two thirds, the latter condition is invalid, and the profit shall be divided between them equally.
- 1403. Any loss shall be divided between the partners in any case in proportion to their shares in the property purchased and this whether the contract for purchase was made jointly, or by one of them alone.

  Example:- Two persons who are partners in partnership on credit suffer loss in their business. The loss must be shared by them equally if they entered into the partnership on the terms that the property purchased should be divided between them equally. If the partnership was concluded on the terms that they should share in the property purchased in the proportion of one third and two thirds, the loss must be divided between them in the same ratio, and this whether the property with regard to which the loss has been suffered was bought by the partners jointly or by one of them on behalf of the partnership.

CHAPTER VII. PARTNERSHIP OF CAPITAL AND LABOUR.

SECTION I. DEFINITION AND CLASSIFICATION OF PARTNERSHIP OF CAPITAL AND LABOUR.

- 1404. A partnership of capital and labour is a type of partnership where one party supplies the capital and the other the labour. The person who owns the capital is called the owner of the capital and the person who performs the work is called the workman.
- 1405. The basis of a partnership of capital and labour is offer and acceptance.

  Example:- A person possessing capital asks some other person to take the capital and use it and to share the profits between them equally, or in the ratio of two thirds and one third, or says something indicative of an intention to form a partnership of Capital and Labour, as when he asks such person to take so much money and use it as capital and share the profits with him in a certain ratio and the latter accepts. A partnership of capital and labour has been concluded.
- 1406. Partnership of capital and labour are of two categories:

  (1). Absolute partnerships of capital and labour;

  (2). Limited partnership of capital and labour.
- 1407. An absolute partnership of capital and labour is one where there is no limitation as to time or place, or any particular type of commerce, or any particular vendor or purchaser. If there is any limitation in respect to any of these matters, the partnership is a limited partnership.

  Example:- It is stipulated shall be bought at a certain time, or a certain place, or shall be of a certain type, or that business shall be done with certain persons or with the inhabitants of a certain place. A limited partnership of capital and labour has been concluded.

SECTION II. CONDITIONS AFFECTING A PARTNERSHIP OF CAPITAL AND LABOUR.

- 1408. The owner of the capital must possess the requisite capacity to appoint an agent. The person supplying the labour must possess the requisite capacity to be appointed an agent.
- 1409. The capital must consist of property which can be made the capital of a partnership. (See section III of the Chapter dealing with the contract of partnership). Consequently, merchandise, real property and debts due to be paid may not be used as capital in a partnership of capital and labour. But if the owner of the capital hands over to the person applying the labour certain merchandise and asks him to sell the same and trade with the proceeds thereof by way of a partnership of capital and labour and the person supplying the labour and accepts and takes delivery of the merchandise and sells the same, applying the proceeds thereof to the capital and trades therewith, the partnership of capital and labour is valid. Likewise, if the owner of the capital asks the person supplying the labour to receive a sum due by a certain person and use the same in the partnership business and the person supplying the labour agrees, the partnership is valid.
- 1410.The capital must be delivered to the person supplying the labour.
- 1411. In a partnership of capital and labour the capital must be definitely stated, as in the case of a contractual partnership, and an undivided part must be fixed of the shares in the profits of the two contracting parties, such as a half or a third. If the partnership is defined in general terms, however, as, for example, that the profit shall be shared between the partners, such partnership is regarded as being in equal shares. The profit is divided by halves between the owner of the capital and person supplying the labour.
- 1412. If any of the conditions mentioned above is absent, as, for example, where the shares of the two contracting parties, being in undivided parts, are not mentioned, and one of them has been given a certain sum of money from the profits, the partnership is voidable.

SECTION III. EFFECT OF A PARTNERSHIP OF CAPITAL AND LABOUR.

- 1413. The person supplying the labour is a trustee. While in his possession, the capital is considered to be trusted to him for safe keeping. He is the agent of the owner of the capital in respect to any dealing with the capital. If he makes any profit, he is the joint owner thereof.
- 1414. In an absolute partnership of capital and labour, the person supplying the labour is authorised to perform any act connected with the partnership, whether fundamental or necessary, solely by virtue of the contract. Thus, he may perform the following acts:

  (1). He may buy property with a view to selling it at a profit. But if he buys property as a result of flagrant misrepresentation, he is considered to have bought it for himself. It is not entered to the account of the partnership;

  (2). He may sell at high or low prices, whether for cash or on credit, but he must give a period for payment which is customary among merchants. He may not sell for a long period of time not recognised by merchants;

  (3). He may accept payment of the price of the goods by means of a transfer of debt;

  (4). He may authorise some other person to act as his agent for buying and selling;

  (5). He may deposit the partnership property for safe keeping, or invest it, or give it on pledge, or take a pledge in respect to it, or give or take it one hire;

  (6). He may proceed to some other place in order to carry on business.
- 1415. In an absolute partnership of capital and labour the person supplying the labour may not mix his own property with the partnership property and give it to the partnership solely by virtue of the contract of partnership. If there is a custom of the town, however, for partners to mix their own property with the partnership property, a partner is an absolute partnership of capital and labour may do the same.
- 1416.If the owner of the capital in an absolute partnership of capita; and ;labour tells the person supplying the labour to act as he thinks fit, or has authorised him to act in accordance with his own opinion in the affairs of the partnership he may in any case mix his own property with the partnership property and can give it to the partnership. He may not, however, unless he is specially authorised, bestow any of the partnership property by way of gift, or give it on loan, or contract debts to an extent greater than the capital, without the express permission of the owner of the capital.
- 1417. If the person supplying the labour mixes the partnership property with his own property, the profits realised are divided in accordance with the amount of the capital. That is to say, he takes the profit arising out of his own capital, and the profit arising from the partnership property is divided between him and the owner of the capital on the

terms agreed upon.

- 1418. Property bought on credit with the permission of the owner of the capital, and which is in excess of the capital, is jointly owned between the two partners as though it were a partnership on credit.
- 1419. If the person supplying the labour leaves the town in which he is and proceeds to some other town on the business of the partnership, he may claim such expenses as are customary from the partnership property.
- 1420. In a limited [partnership of capital and labour the person supplying the labour must observe whatever conditions are laid down by the owner of the capital.
- 1421. If the person supplying the labour exceeds the limit of his authority or acts in contravention of the conditions laid down, he becomes a person wrongfully appropriating property, in which case he is entitled to any profit and responsible for any loss arising out of his business transactions. If the partnership property is destroyed, he must make good the loss.
- 1422. If the owner of the capital forbids the person supplying the labour to go with the partnership property to any particular place, or to sell property on credit, and the latter in contravention of the prohibition proceeds to such place with the partnership property, and such property is destroyed, or if he sells property on credit, and the money is lost, he must make good the loss.
- 1423. If the owner of the capital fixes the period for the termination of the partnership at some particular date, the partnership is cancelled when such date is passed.
- 1424. If the owner of the capital dismisses the person who supplies the labour, he must notify such dismissal to him. Any act performed by him up to the time his dismissal was notified to him is valid. He may not deal with any cash assets in his possession after his dismissal has been notified to him. If he has any property in his possession other than cash, he may sell such property and convert it into cash.
- 1425. The person supplying the labour is only entitled to profit in respect to his work, such work being possessed of value solely by virtue of the contract. Consequently, in a contract of capital and labour, the person supplying the labour is entitled to a share of the profits in accordance with what has been stipulated in the contract.
- 1426. The owner of the capital is entitled to profit in virtue of the capital subscribed. Consequently, in a voidable partnership of capital and labour the owner of the capital is entitled to the whole of the profit, and since the portion of the person supplying the labour is equivalent to that of an employee of the owner of the capital, he is entitled to an estimated wage. Such wage may not, however, exceed the amount agreed upon at the time of the conclusion of the contract. If there is no profit, he is not entitled to an estimated wage.
- 1427. If any of the partnership property be destroyed, the amount thereof is first deducted from the profit and may not be made a charge of the capital. If the quantity destroyed exceeds the amount of the profit and is made a charge on the capital, the person supplying the labour need not make good the loss, and this whether the partnership is valid or voidable.
- 1428. Any damage or loss must in any case be borne by the owner of the capital. If it has been stipulated that the person supplying the labour shall be jointly liable with him such stipulation is invalid.
- 1429. If either the owner of the capital or the person supplying the labour dies, or is afflicted with madness without any lucid interval, the partnership is cancelled.
- 1430. If the person supplying the labour dies and it is not known what has become of the capital, the loss must be made good from his estate. (See Articles 801 and 1355.)

CHAPTER VIII. PARTNERSHIP IS LAND AND WORK AND PARTNERSHIP IS TREES AND WORK.

SECTION I. PARTNERSHIP IN LAND AND WORK.

- 1431. A partnership in land and work is a type of partnership where one party supplies the land and the other work. that is to say, cultivates the land, on terms that the produce is to be divided between them.
- 1432. The basis of a partnership is land and work is offer and acceptance. Thus, if the owner of the land informs the person supplying the labour, that is, the cultivator, that he has given him the land to be cultivated on condition that he shall receive a certain share of the produce and the latter states that he agrees thereto, or is contended therewith, or makes some statement from which his agreement may be inferred, or if the latter informs the owner of the land that he is ready to cultivate such land on those terms and the owner of the land agrees thereto, a partnership in land and work has been concluded.
- 1433. In a partnership in land and work the contracting parties must be of sound mind. They need not have reached the age of puberty. Consequently, a minor who has received authority may also enter into a partnership of land and work.
- 1434. The nature of what is to be sown must be stated, or it must be known that the cultivator may sow what he likes.
- 1435. At the time of the conclusion of the contract the share of the cultivator in the produce must be stated, such as an undivided part consisting of a half or a third. If the share is not fixed, or if it is decided that something other than the produce shall be given, or if it is stated that so many KILES shall be given from the produce, the partnership in land and work is invalid.
- 1436. The land must be fit for cultivation and must be handed over to the cultivator.
- 1437. If any of the conditions mentioned above are absent the partnership in land and work is voidable.
- 1438. In a valid partnership in land and work the produce shall be divided between the two contracting parties in the manner agreed upon.
- 1439. In a voidable partnership in land and work the whole of the produce belongs to the owner of the seed. If the other party is the owner of the land, he is entitled to a rent for the land. If he is the cultivator, he is entitled to an estimated wage.
- 1440. If the owner of the land dies while crops are green, the cultivator shall continue to work until the crops are ripe. The heirs of the deceased cannot prevent him from so doing. If the cultivator dies, his heir stand in his stead, and may, if he wishes, continue the work of cultivation until the crops are ripe, and the owner of the land may not prevent him from so doing.

SECTION II. PARTNERSHIP IN TREES AND WORK.

- 1441. A partnership is trees and work is a type of partnership whereby one party supplies the trees and the other; tends them on the terms that the fruit produced is to be shared between them.
- 1442. The basis of a partnership in trees and work is offer and acceptance. Thus, if the owner of the trees informs the cultivator that he has given him so many trees to tend on the terms that he shall be entitled to a certain share of the fruit and the cultivator, that is, the person who is to tend such trees, agrees thereto, a partnership in trees and work has been concluded.
- 1443. The contracting parties must be of sound mind. They need not have reached the age of puberty.
- 1444. In a partnership in trees and work the shares of the two contracting parties must be stated, that is an undivided part, such as a half or a third, as in a partnership in land and work.
- 1445. The trees must be handed over to the cultivator.
- 1446. In a valid partnership in trees and work, the fruit must be divided between the two contracting parties as agreed.
- 1447. In a voidable partnership in trees and work, the fruit produced belongs entirely to the owner of the trees. The cultivator is entitled to an estimated wage.
- 1448. If the owner of the trees dies while the fruit is unripe, the cultivator may continue to work until the fruit is ripe. The heirs of the deceased cannot prevent him from so doing. If the cultivator dies, his heir stands in his stead and may, if he so wishes, continue to work. The owner of the trees cannot prevent him from so doing.

PROMULGATED BY ROYAL IRADAH 16TH JUMADI-UL-AKHIRA 1291.